No.

In the Supreme Court of the United States

OCTOBER TERM, 1979

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

STATE OF ALASKA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The Solicitor General, on behalf of the Secretary of the Interior, the Secretary of the Treasury, and the Comptroller General of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-12a) is not yet reported. The opinion of the district court (App. C, *infra*, 15a-25a) is reported at 436 F. Supp. 288.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 13a-14a) was entered on February 5, 1980. On April 29, 1980, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to June 2, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether revenues from federal oil and gas and other mineral leases covering reserved public lands in federal wildlife refuges in Alaska are to be distributed according to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, which allocates 25% of the revenues to the counties in which such lands are located and reserves 75% for federal purposes related to the Act, rather than according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which provides that 90% of such revenues be paid to the State of Alaska and 10% be covered into the United States Treasury.

STATUTES INVOLVED

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s, provides in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from

the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the "system") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area. * * *

* * * * *

(g) As used in this section—

* * * * *

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, provides in pertinent part:

> All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C. 1019], shall be paid into the Treasury of the United States; * * * of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: * * *

Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, provides in pertinent part:

> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands * * *.

STATEMENT

1. The Kenai National Moose Range is part of the National Wildlife Refuge System. It was established in 1941, when Exec. Order No. 8979, 6 Fed. Reg. 6471 (1941), withdrew and reserved approximately two million acres of "public and non-public land" on Kenai Peninsula in Alaska for "use as a refuge and breeding ground for moose."[1] This Court, in *Udall* v. *Tallman*, 380 U.S. 1, 12-23 (1965), held that Exec. Order No. 8979 did not withdraw any public land in the Kenai Range from federal oil and gas leasing.

Federal oil and gas leases were first issued on reserved public land in the Kenai Range in 1957 and 1958 (R. 223, 930).[2] Since that time, substantial revenues have been generated by oil and gas leases there, including some $57 million between 1966 and 1976 (R. 957). Since 1976, when the present suits were filed, funds representing a 90% share of the oil and gas leasing revenues have been placed in an escrow account pending the outcome of this litigation (R. 230). We are advised by the Department of the Interior that the account now contains nearly $18 million (including small sums from other reserved refuge lands; see note 3, *infra*).

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[1] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964), enlarged the Kenai Range by approximately 40,115 acres of public land withdrawn and reserved "from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws."

[2] "R." refers to the Clerk's Record filed in the court of appeals.

The Kenai Range is, at present, the only refuge in Alaska generating oil and gas revenues, but we are advised by the United States Geological Survey that additional volumes of recoverable oil and gas are believed to underlie some of the 17 other existing wildlife refuges, including the Arctic National Wildlife Range established in 1960 (25 Fed. Reg. 12598 (1960)) (renamed the William O. Douglas Arctic Wildlife Range by Pres. Proc. No. 4729 (Feb. 29, 1980), 16 Weekly Comp. of Pres. Doc. 419-420 (Mar. 3, 1980)), as well as substantial areas recently withdrawn by the Secretary of the Interior for management as wildlife refuges (45 Fed. Reg. 9562-9726 (1980)). See generally B. Miller, *et al.*, Geological Survey Circular 725, *Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States* 4-5, 16-17, 24-25, 33 (1975).[3]

2. In 1957, when the first leases were issued covering land in the Kenai Range, distributions of revenues from lands in federal wildlife refuges were governed by one or more of at least three statutes. The Wildlife Refuge Revenue Sharing Act, enacted in 1935 (Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383), now codified at 16 U.S.C. (Supp. II) 715s, governed distribution of revenues

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[3] Oil and gas revenues from reserved lands within wildlife refuges in states other than Alaska are minimal, the total for the "Lower 48" for the period 1966-1975 amounting to less than $50,000 (Affidavit of Lynn A. Greenwalt, Director of the United States Fish and Wildlife Service, printed as an appendix to petitioners' brief in the court of appeals (pages 41-43)).

from, *inter alia*, timber, hay, and gravel, on refuge lands, whether they were reserved public lands or acquired lands. It provided that 25% of such revenues should be paid to the county or counties in which such refuge lands were located, the remainder being retained by the federal government.

The terms of that statute also applied to oil and gas revenues on acquired lands within such refuges, by virtue of Sections 3 and 6 of the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, ch. 513, 61 Stat. 914, 915), now codified at 30 U.S.C. 352 and 355. Section 3 of the latter statute, 30 U.S.C. 352, authorized leasing of specified minerals, including oil and gas, on lands acquired by the United States, and Section 6, 30 U.S.C. 355, provided that such acquired land leasing revenues "be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." In the case of federal wildlife refuges, this meant that the revenues were apportioned between counties and the federal government as provided in the Wildlife Refuge Revenue Sharing Act.

Oil and gas leasing revenues covering reserved public lands in such refuges remained subject to the distribution provisions of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which governed distribution of leasing revenues on public lands generally, without regard to whether they were within wildlife refuges or not.

The lands on which leases were issued in the Kenai Range were reserved lands. In 1957, under the Mineral Leasing Act, as amended by Pub. L. No. 85-88, Section 2, 71 Stat. 282, the Territory of Alaska was to receive 52½% of mineral leasing revenues, including oil and gas revenues. When Alaska was admitted as a State, in 1959, it retained this 52½% share of such revenues, and became entitled to an additional 37½% share, representing the portion allocated to each state out of the mineral leasing revenues from reserved public lands within its borders. The State of Alaska thus received a total of 90% of such revenues, with the remainder going into the United States Treasury as miscellaneous receipts.[4]

In 1964, Congress amended the Wildlife Refuge Revenue Sharing Act in a number of respects. Pub. L. No. 88-523, 78 Stat. 701-702. One change was the addition of the term "minerals" to the list of sources

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[4] Section 6(k) of he Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 343, provided that provisions of the Act repealing portions of certain existing statutes were not to deprive the State of rights to revenues enjoyed by the Territory of Alaska under the Mineral Leasing Act; and Section 28(b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 351, amended Section 35 of the Mineral Leasing Act by changing the term "Territory" to "State" in the clause that allocated a 52½% share of mineral revenues to Alaska.

Other states at that time received only a 37½% share of mineral leasing revenues on reserved public lands within their borders, with a 52½% share going to the federal Reclamation Fund. Amendments to the Mineral Leasing Act in 1976 raised the share of states other than Alaska to 50%. Pub. L. No. 94-579, 90 Stat. 2770-2771.

for refuge revenues that are to be distributed according to the allocation provisions of the statute. Pub. L. No. 88-523, Section 401(a), 78 Stat. 701, 16 U.S.C. 715s(a). Another change was the addition of provisions differentiating, with respect to the formula for payments to counties, between acquired lands and reserved public lands. The formula by which counties received 25% of revenues from lands within refuges was, however, retained for reserved lands (Section 401(c)(1), 78 Stat. 701).[5]

2. In 1975, the Director of the Fish and Wildlife Service, who is responsible for administration of the National Wildlife Refuge System, including the Kenai Range, sought the opinion of the Solicitor of the Interior Department on whether the 1964 amendment to 16 U.S.C. 715s changed the requirements of the Mineral Leasing Act "as to receipts from oil and gas leases on refuges created by withdrawal of public lands" (App. D, *infra*, 26a). Despite the 1964 amendment, the Department of the Interior had continued to follow the distribution formula of Section 35 of the Mineral Leasing Act as to revenues from

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[5] An additional payment option was provided with respect to acquired lands (Section 401(c)(2), 78 Stat. 701). Counties whose borders enclosed wildlife refuge land acquired by the United States in fee were to receive "three-fourths of one per centum of the cost of the areas * * *" or 25% of resource revenues collected from the lands, whichever was greater. In 1978, this provision was further amended to include a third option, Pub. L. No. 95-469, 92 Stat. 1319, 16 U.S.C. (Supp. II), 715s(c)(1)(A). The amendments did not change the distribution formula for reserved lands in wildlife refuges.

the Kenai Range (R. 297).[6] The Solicitor responded that the 1964 amendment to 16 U.S.C. 715s "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act as to the treatment of oil and gas revenues from reserved public land within the National Wildlife Refuge System; and he concluded that because the 1964 amendment to 16 U.S.C. 715s was the more recent statute, it superseded the contrary provisions of Section 35 of the Mineral Leasing Act with respect to the distribution of mineral leasing revenues from lands within wildlife refuges (App. D, *infra*, 26a-33a).

The Solicitor then asked the Comptroller General whether he concurred in this conclusion. The Comptroller General issued a concurring decision on July 29, 1975. 55 Comp. Gen. 117 (App. E, *infra*, 34a-41a). The State of Alaska objected to this decision and requested reconsideration. On June 11, 1976, the Comptroller General, after reviewing a second memorandum from the Solicitor which reached the same conclusion as the first, as well as another objection by the State, affirmed his original decision (App. F, *infra*, 42a-58a).

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[6] Kenai Range oil and gas revenues were distributed 90% to the State of Alaska, and 10% to the General Fund of the United States Treasury. After enactment on December 18, 1971, of Section 9(d) of the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 695, 43 U.S.C. 1608(d), the computation of the State (90%) and federal (10%) shares was made on net revenues after the deduction of the amount (2% of gross royalties) paid into the Alaska Native Fund.

3. In 1976, Kenai Peninsula Borough, a political subdivision of Alaska, sued the Secretary of the Interior, seeking a declaration that 16 U.S.C. 715s controlled the distribution of oil and gas revenues on reserved public land within the Kenai Range, and an order requiring the Secretary to pay the Borough 25% of such revenues, to account for past payments of such revenues made to the State of Alaska, and to recover such past payments for Kenai's benefit (R. 14-23). Immediately thereafter, the State of Alaska sued the Secretary, the Comptroller General, and the Secretary of the Treasury seeking a declaration that distribution of oil and gas revenues on reserved public land within the National Wildlife Refuge System was at all times governed by Section 35 of the Mineral Leasing Act (R. 1-9). The State also sought a resumption of the 90% payments out of such revenues to the State, and the invalidation of the two decisions of the Comptroller General as "of no legal effect" (R. 9). The district court ordered consolidation of the two lawsuits.

On August 18, 1977, the district court granted summary judgment for the State of Alaska, holding that Section 35 of the Mineral Leasing Act controlled the distribution of oil and gas revenues from reserved public land within the Kenai Range both before and after the 1964 amendment to 16 U.S.C. 715s and that the Wildlife Refuge Revenue Sharing Act controlled distribution of only those "mineral" revenues derived from acquired refuge lands.

The court of appeals affirmed, concluding that the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act "must be read to apply only to acquired refuge lands and not to reserved refuge lands" (App. A, *infra*, 11a). In reaching this conclusion, the court acknowledged that the plain meaning of the language of the statute "fairly brings the Kenai Moose Range oil and gas revenues within its scope" (*id.* at 7a), but it concluded that application of the plain meaning rule was inappropriate in the circumstances of this case, where it would produce a conflict with another statute, the Mineral Leasing Act. In the absence of any legislative history in the 1964 amendments to 16 U.S.C. 715s evincing a congressional intent to repeal, in part, the Mineral Leasing Act, the court refused to find what it termed a repeal by implication (App. A, *infra*, 7a-12a).[7] In addition, the court stated, without discussion, that this inter-

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[7] As the court of appeals noted (App. A, *infra*, 10a n.6), 16 U.S.C. 715s underwent another major revision in 1978, in the course of which the House proposed revising subsection (a) so as to ensure that the statute would be construed, at least in the future, as applying to oil and gas revenues from reserved lands, as well as from acquired lands. H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 1, 8 (1978). That clarifying provision was, however, removed by the Senate Committee on Environment and Public Works, which decided to leave the statute in essentially the same form. The Committee explained that it was "inappropriate to legislate on this matter pending a determination by the court and [that the Committee] takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, 8 (1978).

pretation would avoid "other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act (*id.* at 11a). The court also drew support for its conclusion from the Interior Department's adherence to the Mineral Leasing Act formula in disbursing revenue to the State from the leases covering the Range until 1975.

REASONS FOR GRANTING THE PETITION

The court of appeals has construed the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, in a manner that disregards its plain language, renders a specific amendment to it meaningless, and is unwarranted by its legislative history. An important federal interest is threatened; for, if the decision is left standing, very substantial revenues, both past and future, will be diverted from the uses directed by Congress in the Wildlife Refuge Revenue Sharing Act and distributed according to a markedly different scheme that does not advance the purposes of that Act.

1. The Wildlife Refuge Revenue Sharing Act applies, without qualification, to "all revenues received by the Secretary of the Interior from the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife

Service." 16 U.S.C. (Supp. II) 715s(a). The conclusion of the court of appeals that the Act applies only to those mineral revenues collected from *acquired lands* has no basis in its language. Indeed, the different treatment of acquired lands and reserved public lands in subsection (c) merely underscores the fact that subsection (a), which identifies the revenue sources to be disbursed under succeeding provisions, must apply to revenues from both categories of lands.

While an inquiry into the meaning of a statute need not end with a determination of the meaning apparent on its face (see, *e.g.*, *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1976); *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543-544 (1940)), "this is a case in which the meaning of [the] statute may be determined by the admittedly old-fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." *United States* v. *Clarke*, No. 78-1693 (Mar. 18, 1980), slip op. 1. What is more, in this instance, the court of appeals was unable to find any expression of intent in the relevant legislative materials that contradicted the literal meaning of the language enacted by Congress, and candidly conceded that "the legislative history of the statute does not resolve the issue" (App. A, *infra*, 9a).[8]

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[8] The chief impetus for the 1964 amendments was the need to assure adequate payments to counties in which the United States was seeking to acquire lands for wildlife refuges—in particular wetlands—since, under the Wetlands Act of 1961, Pub. L. No. 87-383, 75 Stat. 813, the governor of a state or

Attempting to make a virtue of necessity, the court adverted to the *absence* of any comment concerning the addition of the term "minerals," and concluded (*id.* at 8a-12a) that, since a statute granting counties a share of mineral leasing revenues from reserved public lands within wildlife refuges would conflict with the terms of the disbursement provision of the Mineral Leasing Act, 30 U.S.C. 191, Congress could not have enacted such a measure without specifically noting the "conflict" and expressing in the legislative history of the newer statute an intent to "repeal" the older one. Such reliance on the absence of comment on unambiguous statutory language is improper. *Harrison* v. *PPG Industries, Inc.*, No. 78-1918 (May 27, 1980), slip op. 13. Moreover, construing 16 U.S.C. 715s to apply to minerals on reserved public lands does not "repeal" the Mineral Leasing Act; it simply limits the application of its revenue allocation provision to public lands outside of wildlife refuges. Finally, invoking the rule disfavoring repeals by implication, in the present context, violates other equally accepted principles of statutory construction—(1) the "plain meaning" rule,

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an appropriate state agency could veto acquisitions effected under that statute. S. Rep. No. 1096, 88th Cong., 2d Sess. 5 (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2 (1964). Therefore the greatest part of the comments on the proposed bills focused on the provisions for assuring payments to counties in which land acquired for refuges would produce little, if any, revenues. But nowhere in the reports or hearings did any member of Congress express the view that revenues from reserved public lands that came within the literal terms of the Act were to be excluded from its coverage.

as indicated above; (2) the rule that in the case of a statutory conflict, the more specific statute (here, a statute applicable to reserved land within wildlife refuges) prevails over the more general one (here, a statute applicable to reserved lands generally) (*Bulova Watch Co.* v. *United States*, 365 U.S. 753, 758 (1961)); and (3), perhaps most significantly, the rule that all words of a statute are to be given effect and none is to be treated as mere surplusage. *United States* v. *Menasche*, 348 U.S. 528, 529 (1955).

As we have already said (page 7, *supra*), in 1964, when the word "minerals" was added to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, mineral leasing revenues derived from wildlife refuges created out of lands acquired by the United States were already subject to the Act's disbursement provisions by virtue of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355. Thus, unless mineral leasing revenues on *reserved* public lands within wildlife refuges were to be brought within the disbursement provisions of 16 U.S.C. 715s, there was simply no point to adding "minerals" to the list of revenue sources. The court of appeals acknowledged the effect of the Mineral Leasing Act for Acquired Lands, but instead of recognizing the fact that this made the addition of "minerals" to 16 U.S.C. 715s unnecessary where acquired lands were concerned, it simply commented that there was thus "no conflict with the Wildlife Refuge Revenue Sharing Act" (App. A, *infra*, 3a n.3). While it is true that duplicative laws are not

conflicting laws, it is surely unwise to aim for that result in construing a statute.[9]

2. The allocation of very substantial sums is at stake in this case.[10] As explained above, 90% of some $57 million generated by leasing on the Kenai Range between 1966 and 1976, and an additional $17 mil-

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[9] The court of appeals also relied on the Secretary of the Interior's practice, between 1964 and 1975, of distributing oil and gas leasing revenues from reserved lands according to the terms of Section 35 of the Mineral Leasing Act. But that practice, of course, was not self-validating, and it has been ended following a careful and reasoned consideration of the relevant statutes by the Secretary (App. D, *infra*), with the concurrence of the Comptroller General (Apps. E and F, *infra*). This Court has recognized that reversals by agencies of earlier statutory interpretations are entitled to judicial deference when such reversals follow a "detailed and comprehensive" reevaluation. *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). See also *NLRB* v. *Local Union No. 103, Iron Workers*, 434 U.S. 335, 351 (1978).

[10] Our estimates take no account of possible revenues from the leasing of minerals other than oil and gas because we are advised by the Department of the Interior that substantial revenues are not expected to be generated by leasing with respect to other minerals on wildlife refuges in the foreseeable future. Minerals leasable under the Mineral Leasing Act include coal, phosphate, sodium, potassium, oil shale, native asphalt, and bituminous rock. The Secretary's recent withdrawals of land for wildlife refuges in Alaska have, however, provided that they are "withdrawn from settlement, sale, location, entry or selection under the operation of the public land laws, including but not limited to the mining laws (30 U.S.C. Chap. 2) * * *"; special provision is made for oil and gas leasing "when the Secretary determines such leasing to be compatible with the purposes of the Refuge." See, *e.g.*, 45 Fed. Reg. 9565, 9577 (Innoko National Wildlife Refuge), 9623, 9631 (Selawik National Wildlife Refuge) (1980).

lion representing subsequent escrowed revenues are indisputably involved. Given the indications of oil and gas reserves in other sections of Alaska either presently maintained as wildlife refuges or proposed for such use in the future, the price of leaving standing the decision of the court of appeals may well be the future diversion of hundreds of millions of dollars from allocations serving the purposes of the Wildlife Refuge Revenue Sharing Act.[11] Because such a windfall for the State is plainly contrary to the intent of Congress, manifested in clear and unambiguous language, and because consideration of the question by another circuit is not likely in the foreseeable future (see page 6, note 3, *supra*), this Court should now intercede.

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[11] The 1964 amendment to the Act provided that any amount remaining in the fund created by wildlife refuge revenues after the prescribed payments had been made to the counties could be used by the Secretary for the management of the refuge system and for the enforcement of the Migratory Bird Treaty Act (Section 401(e), 78 Stat. 702). The Act now provides that any amount remaining after the required payments have been made is to be transferred to the Migratory Bird Conservation Fund for acquisition of areas suitable for migratory bird refuges. 16 U.S.C. (Supp. II) 715s(e). In recent years, however, total receipts have amounted to less than the sum necessary to make all county payments as prescribed, since payments to counties enclosing acquired refuge lands are not necessarily calculated as a percentage of revenues from those lands and thus may exceed revenues produced. See H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 4-5 (1978); S. Rep. No. 95-1174, 95th Cong., 2d Sess. 2 (1978).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 1980

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 77-3265

Civil No. A-76-94

[Filed Feb. 5, 1980]

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF-CROSS-COMPLAINANT-APPELLANT

vs.

STATE OF ALASKA, PLAINTIFF-APPELLEE

and

CECIL D. ANDRUS, Secretary of the Interior, ET AL.,
DEFENDANT-APPELLEE

No. 78-1443

Civil No. J-76-3

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF-CROSS-COMPLAINANT-APPELLEE

vs.

STATE OF ALASKA, PLAINTIFF

and

CECIL D. ANDRUS, Secretary of the Interior, ET AL.,
DEFENDANT-APPELLANT

Appeal from the United States District Court
for the District of Alaska

Before: CHAMBERS and TANG, Circuit Judges, and THOMPSON,* District Judge

OPINION

TANG, Circuit Judge.

These consolidated actions were brought to determine the proper distribution of revenues from federal oil and gas leases on reserved public lands within the Kenai National Moose Range, Alaska, a part of the National Wildlife Refuge System. Appellants herein, Kenai Peninsula Borough (Kenai) and the Secretary of the Interior, Secretary of the Treasury, and the Comptroller General (federal defendants) seek distribution pursuant to the Act of June 15, 1935, as amended, 16 U.S.C. § 715s (1976)[1] (Wildlife Refuge Revenue Sharing Act). The State of Alaska (Alaska) seeks distribution pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 191. The district court, in a decision reported at 436 F.Supp. 288 (D. Alas. 1977), granted summary judgment in favor of Alaska.

We affirm.

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* Honorable Bruce R. Thompson, United States District Judge for the District of Nevada, sitting by designation.

[1] References to § 715s are to the section as it existed in 1976. In 1978, the section was amended in several respects. The substance of these changes has no impact on the issue in this case; but some of the paragraphing of the section has been altered. *But see* footnote 6 *infra*.

FACTUAL AND STATUTORY BACKGROUND

The opinion of the district court should be consulted for a more detailed rendering of the legislative background. A brief account will suffice here. The Kenai National Moose Range was created in 1941 by the reservation of land in the public domain.[2] The Mineral Leasing Act is the statute governing mineral leases on reserved public lands generally. Under the Act, from 1957 and 1958 until the events leading to this lawsuit, Alaska received 90% of the net revenues from oil and gas leases in the Kenai Range, while the remaining 10% accrued to the U.S. Treasury. 30 U.S.C. § 191.[3]

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s governs the distribution of revenues only from lands in the National Wildlife Refuge System. It provides that revenues from refuge lands go into a separate fund, and that these revenues then

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[2] Reserved public domain lands are public domain lands, never in state or private ownership, which have been set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described simply as reserved lands. Land in the Wildlife Refuge System may also be acquired. Acquired lands are those granted or sold to the United States by a state or citizen.

[3] The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, governs the distribution of revenues from oil and gas leases on acquired lands. It provides that lease revenues "be distributed in the same manner as prescribed for other receipts from the land affected by the lease." *Id.* § 355. Thus, for mineral leases on acquired lands there is no conflict with the Wildlife Refuge Revenue Sharing Act.

be divided between the local county in which the land is situated (25%) and the Wildlife Refuge Fund (75%). Prior to 1964, the distribution schemes of the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act were not in conflict because the list of revenue sources in the Wildlife Refuge Revenue Sharing Act did *not* include the sale or other disposition of *minerals* on the refuge lands.

Amendments in 1964, however, made significant alterations in the distribution scheme of 16 U.S.C. § 715s(c) and added the word "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a). Although the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act created a *prima facie* conflict between the allocation schemes of the two acts for mineral revenues on reserved refuge land, the legislative history of the amendments shows no awareness of the significance of the change. The legislative history is concerned exclusively with the proposed alterations within the distribution scheme of the Wildlife Refuge Revenue Sharing Act. Moreover, the Interior Department, which is charged with the administration of these provisions, over the years since 1964 until 1975 gave no studied attention to the conflict and continued to distribute the Kenai Refuge oil and gas lease revenues to Alaska according to the Mineral Leasing Act.

In 1975, in response to a request by the Director of the Fish and Wildlife Service, the Solicitor of the Interior Department issued an opinion that the 1964

addition of "minerals" to the Wildlife Refuge Revenue Sharing Act should control the distribution of oil and gas revenues on reserved refuge land, superseding the contrary provisions of the Mineral Leasing Act. The Comptroller General concurred in this conclusion. 55 Comp. Gen. 117. After objection by Alaska and reconsideration by the Solicitor and the Comptroller General, the Comptroller reaffirmed the original conclusion. Thereafter these lawsuits were initiated. All federal distribution of Kenai Moose Range oil and gas revenues ceased at the end of 1976, pending the outcome of this litigation.

ISSUES

Upon appeal, on behalf of Kenai and the federal defendants, it is argued that the addition of the term "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a) and the scheme of distribution contemplated in 16 U.S.C. § 715s(c) are of clear enough application that, in the absence of an expression of contrary meaning in the legislative history, the statute would be construed literally. If the amended version of § 715s is construed literally, it conflicts with the Mineral Leasing Act. And both because it is the later of two conflicting statutes and because it is the more specific of a specific and a general statute, the Wildlife Refuge Revenue Sharing Act should control the distribution of these oil and gas revenues. The appellant also argues that the Interior Department and the Comptroller Gen-

eral 1975 opinions interpreting the statutes are entitled to deference.

Alaska, on the other hand, argues that "minerals" in the Wildlife Refuge Revenue Sharing Act should be read restrictively so that the term applies only to mineral revenues on acquired refuge lands and not to those from reserve refuge lands. Alaska cites certain incidents in the legislative history of the 1964 amendments and claims they show that Congress did not intend that the addition of "minerals" would alter prior law. Alaska also urges (1) that the appellants' literal interpretation is contrary to the Interior Department's interpretation in practice from 1964 to 1975 when revenues were distributed according to the Mineral Leasing Act; (2) that in 1976 Congress reenacted the Alaska distribution section of the Mineral Leasing Act, without modification or comment, after 11 years of agency interpretation and at a time when clarification of the statute would otherwise have been sought, thereby showing congressional intent that the Mineral Leasing Act cover *all* reserved land; and (3) that a literal construction here causes potential interpretive difficulties with other statutes, chiefly the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, 48 U.S.C. Note preceding § 21, and the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1608.

DISCUSSION

The difficulty here results from the addition of but one word, the term "minerals," to a catalog list of revenue sources in 16 U.S.C. § 715s(a). The parties agree that this addition creates an apparent conflict between the two statutory provisions involved. The touchstone to the resolution of the conflict is to ascertain the intent of Congress: by the addition of the term "minerals" in 16 U.S.C. § 715s(a), what effect, if any, did Congress intend to have on the distribution of mineral revenues on reserved refuge lands under 16 U.S.C. § 715s(c) or 30 U.S.C. § 191?

Appellant Kenai, relying on *Caminetti* v. *United States*, 242 U.S. 470 (1917), argues that 16 U.S.C. § 715s is clear and unambiguous on its face and therefore that resort to legislative history or other extraneous sources is inappropriate. *See also United States* v. *Wilson*, 591 F.2d 546, 547 (9th Cir. 1979); *Adams* v. *Morton*, 581 F.2d 1314, 1320 (9th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979). It is true that under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope, if § 715s is read in isolation.

However, when a plain meaning reading of a statute brings that statute into conflict with another statute and disrupts a preexisting network of statutory provisions, it is appropriate to look to the legislative history for help in ascertaining congressional

intent. *See Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976); *Church of Scientology* v. *U.S. Department of Justice*, —— F.2d ——, Slip Op. 696, 700-02 (9th Cir. Nov. 8, 1979). *Cf. Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965) (ability of courts to adopt restricted meaning of word when usual meaning leads to absurd results); *League to Save Lake Tahoe, Inc.* v. *Trounday*, 598 F.2d 1164, 1173 (9th Cir. 1979) (resort to legislative history proper when words of statute are not conclusive as to legislative intent); *Get Oil Out! Inc.* v. *Exxon Corp.*, 586 F.2d 726, 729 (9th Cir. 1978) (court obligated to construe federal statutes so that they are consistent with each other). This is especially true when the face of the statute gives no indication of a congressional intent to repeal existing legislation or of a purpose, the accomplishment of which might require superseding prior statutes.

Unfortunately, the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here. The principal purpose of the 1964 amendments was to improve the distribution scheme for revenues from acquired refuge land, so that local authorities would more likely approve of federal acquisition of wildlife refuge land. *See* H.R. Rep. No. 1753, 88th Cong., 2d Sess., *reprinted in* [1964] *U.S. Code Cong. & Ad. News* 3265. Accordingly, the addition of "minerals" occurred without comment; and

potential conflict with the Mineral Leasing Act went unremarked. Of course, the mere fact that Congress was silent when one would have expected comment does not necessarily mean that an alteration in revenues from mineral leases was not intended by Congress.[4] Similarly, details in other portions of the legislative history from which there can be consistently implied an assumption that the prior revenue distribution would not be altered, are not in themselves dispositive.[5]

Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments.[6]

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[4] *Cf. Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 11 (1942) ("The search for significance in the silence of Congress is too often the pursuit of a mirage.").

[5] The district court discusses these incidents. 436 F.Supp. at 292. Alaska also relies on these incidents. However, those items of legislative history show, at most, only that Congress had no express awareness that the addition of "minerals" might alter prior law. It is too far a jump to conclude further that Congress positively intended no change. *But see* footnote 7 *infra*. These incidents of legislative history in themselves cannot be dispositive of the issue here because they are connected only tenuously to the question of the intended distribution scheme and cannot be read in effect as a statement of congressional intent.

[6] Ideally, in most situations where a statute has a potential for conflict with another prior statute, either the statute

The appellants urge us to find that the later Wildlife Refuge Revenue Sharing Act has repealed by implication the earlier Mineral Leasing Act as to revenues from refuge lands. Repeal by implication, however, is not favored; if possible, statutes should be read so as to give effect to each of them. *Morton* v. *Mancari*, 417 U.S. 535, 549-51 (1974); *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936); *United States* v. *Jones*, 607 F.2d 269, 272 (9th Cir. 1979); *United States* v. *Burnett*, 505 F.2d 815, 816 (9th Cir. 1974), *cert. denied*, 420 U.S. 966 (1975). This is the preferred course especially when, as here, the purpose and legislative history of the later act

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itself or the legislative history will contain enough indication of purpose and congressional intent that the matter can be resolved there. In fact, the question of the meaning of "minerals" in § 715s and its application to mineral lease revenues on reserve refuge land was before Congress in 1978. In the course of a major reworking of § 715s, it was proposed to clarify this question so that oil and gas revenues from refuge lands were to be governed by § 715s, and not by 30 U.S.C. § 191, at least from the date of the 1978 enactment. Finally, however, the Senate Committee on Environment and Public Works noted that the issue was currently being determined in the instant case and preferred to leave the statute in its original form, pending the outcome of this litigation. "The Committee believes it is inappropriate to legislate on this matter pending a determination by the court, and takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S.Rep. No. 95-1174, 95th Cong., 2d Sess. 4, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* 5003, 5006. *See also Id.* at 8, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* at 5009-10 (additional views).

gives no clear foundation for an implied repeal.[7] There can be no implied repeal unless the intention of the legislative body to repeal is clear. *Morton* v. *Mancari, supra; United States* v. *Georgia-Pacific Co.*, 421 F.2d 92, 102 (9th Cir. 1970). If possible, we seek an interpretation of the later act which will harmonize it with the Mineral Leasing Act and cause least disruption to the other related statutes.

The stated purpose of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act was to facilitate the acquisition of lands from local owners, with the approval of local governing authorities. The focus of attention, therefore, was the treatment under the Act of *acquired* lands. Accordingly, we hold that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to be applied only to acquired refuge lands and not to reserved refuge lands. This interpretation is warranted because to hold otherwise is to find an implied repeal when Congress has expressed no clear intent. It also harmonizes the operation of the two statutes and gives effect to both. Further, it avoids other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act. This interpretation also draws support from the fact that the department construed the statute this way in practice between

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[7] The few items of legislative history which do exist, *see* footnote 5 *supra*, give support to the position that Congress did not clearly intend an implied repeal. But even without them, such intent would still be absent.

1964 and 1975, which practice we are not wont to disregard as merely eleven years of inadvertent statutory construction by the agency.[8]

Because clear congressional intent to effect a repeal by implication has not been shown and because the interpretation of the two statutes adopted by the district court and by this court gives effect to both statutes, the judgment of the district court is affirmed.

Affirmed.

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[8] The department did change its interpretation in 1975. *See* page 3 *supra*. The appellants argue that the department's new interpretation is entitled to the customary deference shown to agency interpretations under *Udall* v. *Tallman*, 380 U.S. 1 (1965). They further argue that the most recent departmental interpretation is equally entitled to deference despite the fact that it is a change of position, citing *Andrus* v. *Sierra Club*, 99 S.Ct. 2335 (1979), and *Montana Power Co.* v. *Environmental Protection Agency*, 608 F.2d 334 (9th Cir. 1979). But in *Sierra Club*, the change of interpretation occurred in the context of a comprehensive change from advisory guidelines to mandatory regulations. And in *Montana Power*, the agency's changed interpretation of *its own regulations* was involved. Here we do not have even a change in an agency's regulations implementing a statute. Rather it is a case of the agency's interpretation of a single term in a statute. In this context the term is neither a term of art nor one whose interpretation requires that deference be shown to the expertise of those charged with administering the operation of the statute. *Cf. General Electric Co.* v. *Gilbert*, 429 U.S. 125, 142-43 (1976) (less deference to administrative guidelines when they conflict with earlier agency pronouncements).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

77-3265
No. 78-1443

DC CV A-76-94)
J-76-3) JAH

KENAI PENINSULA BOROUGH, Municipal Corp.,
PLAINTIFF/CROSS-COMPLAINANT/APLT.

vs.

STATE OF ALASKA, PLAINTIFF/APPELLEE

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
DEFENDANT/APPELLEE

KENAI PENINSULA BOROUGH, Municipal Corp.,
PLAINTIFF/CROSS-COMPLAINANT/APLE.

vs.

STATE OF ALASKA, PLAINTIFF

vs.

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
DEFENDANTS/APPELLANTS

Appeal from the United States District Court
for the District of Alaska

(Anchorage & Juneau)

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage & Juneau) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY

ATTEST 13 May 1980

RICHARD H. DEANE
Clerk of Court

by: /s/ Oscar Tagle
Deputy Clerk

Filed and entered February 5, 1980

APPENDIX C

UNITED STATES DISTRICT COURT
D. ALASKA

Civ. Nos. A76-94 & J76-3

KENAI PENINSULA BOROUGH, PLAINTIFF

v.

CECIL D. ANDRUS, DEFENDANT

STATE OF ALASKA, PLAINTIFF

v.

CECIL D. ANDRUS, ET AL., DEFENDANTS

Aug. 17, 1977

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, Alaska, for Kenai Borough.

Avrum Gross, Atty. Gen., State of Alaska by Frederick Boness, Asst. Atty. Gen. Juneau, Alaska, for plaintiff.

G. Kent Edwards, U.S. Atty., Anchorage, Alaska, for defendant.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on cross motions for summary judgment. The precise issue before the court is whether the distribution of reve-

nues from mineral leases within the Kenai National Moose Range is governed by the Mineral Leasing Act, 30 U.S.C. § 191, or 16 U.S.C. § 715s.

The Kenai National Moose Range was created by the reservation of land in the public domain.[1] From statehood until the events leading to this lawsuit the State of Alaska received mineral leasing revenues from the Kenai National Moose Range, pursuant to 30 U.S.C. § 191. Under that statute the State received 90% of the lease revenues, with the remainin 10% accruing to the United States as miscellaneous receipts. On July 29, 1975, the Comptroller General issued an opinion stating that mineral leasing receipts from wildlife refuges created by reservation, as well as receipts from wildlife refuges created by acquisition, were governed by the distribution scheme of 16 U.S.C. § 715s. The Comptroller General determined that 16 U.S.C. § 715s, as amended in 1964, required distribution of 25% of the net receipts from mineral leases on reserved refuges to the counties in which the refuge was located, with the remaining 75% distributed to the wildlife refuge fund. The State of Alaska objected to the Comptroller General's opinion, and upon reconsideration the original position was affirmed by the Comptroller General in an opinion issued on June 11, 1976.

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[1] In general, reserved lands are lands which were never in state or private ownership while acquired lands are those granted or sold to the United States by a state or citizen. *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966).

On May 14, 1976, Kenai Peninsula Borough, the borough in which Kenai National Moose Range is located, filed suit against the Secretary of Interior seeking distribution of mineral leasing receipts in conformity with 16 U.S.C. § 715s. On July 8, 1976, the State of Alaska filed suit against the United States seeking distribution as provided by 30 U.S.C. § 191. The actions were consolidated on August 12, 1976, with jurisdiction founded on 28 U.S.C. § 1331 (a). The facts are undisputed, and the controversy is purely one of statutory interpretation.

Before proceeding with the disposition of the motions it is necessary to outline the interplay of the statutes involved in this suit. As noted above, the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181, 191, requires the United States to distribute 90% of mineral leasing receipts from public domain lands to the states. *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, 65 n. 2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966). Revenues from mineral leases on acquired lands of the United States are distributed under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, which requires mineral lease receipts to

> "be paid into the same funds or accounts in the Treasury and . . . distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355.

Prior to the 1964 amendment, 16 U.S.C. § 715s, at least as interpreted by the State of Alaska and the Comptroller General, did not apply to mineral lease

receipts on reserved public lands.[2] However, all non-mineral activity receipts from refuges were distributed under 16 U.S.C. § 715s. In summary, prior to 1964, receipt from activities on wildlife refugees were distributed in the following manner:

1. All non-mineral activity receipts were distributed 25% to the counties and 75% to a federal wildlife refuge fund;
2. Mineral leasing receipts from reserved lands were distributed 90% to the State of Alaska and 10% to a federal fund for miscellaneous receipts;
3. Mineral leasing receipts from acquired lands were distributed like refuge receipts from non-mineral activity—25% to the counties and 75% to the wildlife refuge fund.

In 1964, 16 U.S.C. § 715s(a) was amended to read:

> Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, *minerals*, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the

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[2] Prior to 1964, 16 U.S.C. § 715s(a) provided that 25% of money received by the United States "from the sale or other disposition of surplus wildlife, or sale of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, . . . shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, . . ."

> basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (emphasis added).

At the same time, the distribution scheme was changed to differentiate between receipts from reserved lands and receipts from acquired lands. 16 U.S.C. §§ 715s(c)(1) and 715s(c)(2). The position of the United States and Kenai Peninsula Borough is that 16 U.S.C. § 715s(a), 714s(c)(1), as amended, requires that 25% of the mineral leasing receipts from reserved lands be distributed to Kenai Peninsula Borough. In contrast, the State of Alaska would have this court interpret the word "minerals" restrictively to apply only to acquired lands so that mineral leasing receipts from a wildlife reserve created by withdrawal of land from the public domain would be distributed 90% to the State of Alaska and 10% to the miscellaneous fund.

The Kenai Peninsula Borough argues that prior to 1964 16 U.S.C. § 715s governed the distribution of mineral leasing receipts from public land. Specifically, Kenai Peninsula Borough argues that the language "other privileges" was intended to include mineral leasing receipts from reserved and acquired land. This interpretation ignores the fact that mineral

leasing receipts from reserved land within wildlife refuges generated prior to 1964 were in fact distributed under 30 U.S.C. § 191. Moreover, it ignores the fact that the government continues to adhere to its construction of 16 U.S.C. § 715s as it read prior to amendment.[3] Such a long-standing, contemporaneous, and practical interpretation by the executive officers charged with administration of a statute is strong evidence of the meaning of a statute. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116, 67 S.Ct. 1129, 91 L.Ed. 1375 (1947). *See generally*, Sutherland, Statutory Construction § 49.03, at 233 (4th ed. 1972). The borough cites obscure, often ambiguous evidence of a contrary administrative interpretation. The ambiguous material is consistent with the State of Alaska's position, and to the extent that the evidence contradicts the state's interpretation it pales in the face of the actual fact of distribution. Neither the legislative history nor the policy of management of the refuges requires a different result.

Rejection of Kenai Peninsula Borough's interpretation of 16 U.S.C. § 715s(a) as it read prior to the

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[3] On June 11, 1976, the Comptroller General held: "The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s and that to the extent the counties benefited from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, *supra*." Comptroller General B-118678, at 3 (June 11, 1976). See also Comptroller General B-118678, at 1-2 (June 11, 1976).

1964 amendment, of course, is only the beginning of the inquiry. The primary issue is whether 16 U.S.C. § 715s(a), as amended in 1964, should be construed literally or restrictively. The general rule of statutory construction is that there is no occasion for construction where the language is clear and unambiguous and does not lead to absurd or impracticable results. *Caminetti* v. *United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917). *See generally* Sutherland, Statutory Construction, § 46.01, at 48 (4th ed. 1972). In determining whether a statutory term is clear and unambiguous, the court generally looks to the Act itself to make a prima facie determination. *See Foley Bros.* v. *Filardo*, 336 U.S. 281, 284, 69 S.Ct. 575, 93 L.Ed. 680 (1949). *See generally* Sutherland, Statutory Construction, § 46.05, at 55-56 (4th ed. 1972). In the case at bar, there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word "minerals". Thus, a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands.

However, there are limits to literalism. All statutes must be interpreted in light of their statutory purpose, and a literal reading which would be contrary to the legislative purpose is to be avoided if the statute can be read in a manner consistent with the words and purpose. *Hagger Co.* v. *Helvering*, 308 U.S. 389, 394, 60 S.Ct. 337, 84 L.Ed. 340 (1940). *See generally* Sutherland, Statutory Construction § 46.07, at 65 (4th ed. 1972). Where a literal in-

terpretation would result in applications beyond the purpose for which the statute was enacted, courts construe the language restrictively in order to give effect to the spirit of the statute. *See generally* Sutherland, Statutory Construction, §§ 54.04, at 358, 54.06, at 368, 46.07, at 66 (4th ed. 1972).

The primary purpose of the 1964 amendment of 16 U.S.C. § 715s was undoubtedly to facilitate the acquisition of waterfowl habitat areas. The Secretary of the Interior was authorized to acquire such land, but only if the governor of the state in which the land was located approved the acquisition. The governors generally refused to approve acquisitions because when land was acquired it was withdrawn from the tax rolls. Local communities were deprived of property tax revenues and would not benefit from the 25% distribution scheme if the land was not producing revenue. Consequently, the distribution scheme for acquired wildlife refuge land, 16 U.S.C. § 715s(c) had to be amended to facilitate acquisition. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 1 (1964); S. Rep. No. 1096, 88th Cong., 2d Sess. 2 (1964), U.S. Code Cong. & Admin. News 1964, p. 3265.

While the purpose of amending 16 U.S.C. § 715s (c) is clear, there is little evidence of the purpose behind adding "minerals" to the product list of 16 U.S.C. § 715s(a). If the court accepts Kenai's view this silence is surprising given the substantial reallocation of revenues which would result if the amendment did effect distributions from reserved lands. If the addition of "minerals" was intended to alter the

distribution, one would expect mention of this fact in discussions which focused on 16 U.S.C. § 715s(a), and one would expect vigorous objection from the states. Cf. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 77 (1964), U.S. Code Cong. & Admin. News 1964, p. 3265. More Equitable Payments to Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 Before Committee on Commerce, 88th Cong., 2d Sess. 77 (1964). Of course, "the search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio* v. *Comm'n*, 316 U.S. 4, 11, 62 S.Ct. 875, 880, 86 L.Ed. 1229 (1942). The State of Alaska's restrictive reading, however, is supported by more than the mere silence of Congress. First, if Congress had intended to change the distribution scheme for mineral leasing revenues from reserved lands, the estimated payments to counties after the 1964 amendment would have substantially increased over past payments. However, no increase in payments to Kenai Peninsula Borough was projected in the cost estimate considered by Congress. The 1963 payments from the Kenai wildlife refuge receipts were $1,768. The estimated payments in 1963, assuming the 1964 amendment had been in force in 1963, were identical. H.R. Rep. No. 1793, 88th Cong., 2d Sess. 3 (1964); S. Rep. No. 1096; 88th Cong., 2d Sess. 13 (1964).

These estimated distributions were estimates for both acquired and reserved lands. This is evident from the inclusion of payments from the Kenai wildlife refuge in the projections. There is also explicit

recognition of this fact in footnote 3 to the cost estimate.

Secondly, Congressional intent is evident in the Congressional expectation that the wildlife refuge fund would decrease if the 1964 amendment was adopted. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 12 (1964). If mineral leasing receipts from public lands were intended to be distributed in conformity with 16 U.S.C. § 715s(c)(1), the wildlife refuge fund would have been substantially increased, and not reduced, as 75% of the mineral leasing receipts from reserved lands would have been reallocated to the wildlife refuge fund. Finally, it should be observed that the administrative agency charged with distribution of the fund distributed mineral lease revenues from public land for more than ten years after amendment as provided by 30 U.S.C. § 191. Only recently has the Secretary taken a contrary position.

Thus, this court concludes that the word "minerals" as used in the 1964 amendment of 16 U.S.C. § 715s(a) must be read restrictively rather than literally. The 1964 amendment of 16 U.S.C. § 715s (a) was not intended to amend 30 U.S.C. § 191 to require distribution of mineral leasing receipts from reserved land in accordance with 16 U.S.C. § 715s (c). To hold otherwise would require an application of literalism in violation of the apparent Congressional purpose. The interpretation adopted does not make "minerals" superfluous as 16 U.S.C. § 715s does continue to govern the distribution of mineral lease

receipts from acquired land. Cf. Sutherland, Statutory Construction § 46.06, at 63 (4th ed. 1972). Moreover, this construction is consistent with the rule of construction disfavoring implied amendments. Sutherland, Statutory Construction § 22.13, at 139 (4th ed. 1972).[4]

Accordingly, IT IS ORDERED:

1. THAT the State of Alaska's motion for partial summary judgment is granted;

2. THAT the cross-motions for summary judgment filed by Kenai Peninsula Borough and the United States are denied.

DATED at Anchorage, Alaska, this 17th day of August, 1977.

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[4] Because of this result the court is not required to determine: Whether section 317 of the Federal Land Policy and Management Act, in amending the Mineral Leasing Act of 1920, impliedly amended the 1964 amendment to 16 U.S.C. § 715s. Nor does the court need determine whether the 1964 amendment to 16 U.S.C. § 715s constitutes a breach of compact between the State and the United States.

APPENDIX D

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Memorandum

To: Director, United States Fish and Wildlife Service

From: Solicitor

Subject: Oil and Gas Receipts from Public Domain Lands Withdrawn for Refuges

You have requested the opinion of this office as to whether the 1964 amendment (Act of August 30, 1964, 78 Stat. 701) to the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. § 715s, as amended), changed the requirements of the Mineral Leasing Act, 30 U.S.C. § 181, *et seq.*, as to receipts from oil and gas leases on refuges created by withdrawals of public lands. Specifically, you inquired whether the 1964 amendment requires that such receipts enter the discrete "refuge receipts account" contemplated by the amendment, or whether, instead, they must pass through the disposition detailed in the Mineral Leasing Act. In addition, you asked whether the answer to the foregoing question would be changed either by the fact that the United States' mineral rights on certain acquired, as opposed to withdrawn, refuge

lands were not acquired simultaneously with the lands (the mineral rights having always been in the United States), or by the fact that it is common practice to include a provision in refuge withdrawals explicitly excluding the Mineral Leasing Act from the effect of the withdrawal.

We conclude that the 1964 amendment does, in fact, require a different disposition of revenues for all refuge lands—regardless of the manner of the refuges' creation—than that specified in the Mineral Leasing Act, and that the 1964 amendment supersedes the Mineral Leasing Act. We conclude that neither the manner in which refuge mineral rights were acquired, nor references to the Mineral Leasing Act in withdrawal orders, affect this supersedure. The requirements of the Mineral Leasing Act, insofar as they relate to revenues from leases, are:

> All money [except, as the section later provides, moneys from "petroleum reserves"] received from sales, bonuses, royalties, and rentals of public lands under the provisions of [the Mineral Leasing Act] shall be paid into the Treasury of the United States . . . (30 U.S.C. § 191).

This provision also outlines the required disposition of such funds: 37½ percent of the receipts goes to the State within the boundaries of which the public lands are located; 52½ percent goes to the reclamation funds, except in the case of Alaska, where this amount goes to the state; and the remainder goes to the Treasury as miscellaneous receipts.

In contrast, 16 U.S.C. § 715s, since its amendment in 1964, requires that:

> . . . all revenues received by the Secretary of the Interior for the sale or other disposition of . . . minerals . . ., during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (16 U.S.C. § 715s(a)).

Section 715s goes on to state that, at the end of each fiscal year, there shall be paid from this discrete fund, out of the fiscal year's receipts—

> . . . (1) to each county in which reserved public lands in an area of [the National Wildlife Refuge] System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System [with provision being made for multi-county refuges]. . .;
>
> (2) to each county in which areas of the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas [as periodically adjusted in terms of current value, and exclusive of the cost of improvement on the lands]. . ., or (B) [the amount the county would receive under subsection (1), above], whichever is greater. . . (16 U.S.C. § 715s(c) (emphasis supplied)).

On the basis of these statutory provisions, then, the question is: under which of the two systems did Congress intend oil and gas revenues from refuges created by withdrawal out of public lands to be distributed?

It is observed that the 1964 amendment to section 715s is a more recent Congressional statement than any contained in the Mineral Leasing Act. The Mineral Leasing Act's phrasing regarding "the public lands" dates from the Act's initial passage on February 25, 1920, and the provisions dealing with the state of Alaska date from July 7, 1958, when the Act was most recently amended.

It is an accepted rule of statutory construction that when statutes deal with the same subject they are—

> so far as reasonably possible construed to be in harmony with each other. But if there is an irreconcilable conflict between the new provision and prior statutes relating to the same subject matter, the new provision will control, as it is the later expression of the legislature. A. Sutherland, *Statutes and Statutory Construction*, Vol. 2A, § 51.02 (4th ed. C. Dallas Sands 1973).

The question thus becomes whether the two statutes can be harmonized, or whether, insofar as federal receipts from the Refuge System are concerned, there is an "irreconcilable conflict" between them.

Upon reviewing the language and the legislative history of the 1964 amendment of section 715s, we have concluded that the conflict is irreconcilable. We be-

gin by noting that if revenues from those refuges which have been created by withdrawal of lands from the public domain were to be distributed under the scheme established by the Mineral Leasing Act, an entire section of the 1964 amendment—section 715s (c) (1)—would have no meaning or function whatever. The sole function of that section is to create a different payment scheme, for refuges which exist on "reserved public lands," than the payment system which is established for refuges on "acquired" lands by section 715s(c)(2). Since refuges can only be established on lands which have been condemned, purchased, or received by donation—all of which are clearly "acquired" lands, and therefore governed by section 715s(c)(2)—or on lands withdrawn from the public domain for refuge purposes, "reserved" lands can only mean "withdrawn" lands. And, since "it is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute" (A. Sutherland, *supra*, at Vol. 2A, § 46.06), section 715s(c)(1) must be given some meaning as regards the receipts from "minerals" on "reserved lands," which it purports to distribute. The only way such meaning could exist without, at the same time, an irreconcilable conflict with the Mineral Leasing Act also existing would be to interpret the reference to "minerals" in section 715s as not comprehending oil and gas.

On its face, we submit that there would not appear to be ambiguity as to whether the word "minerals"

comprehends oil and gas. At the fringes of the word's coverage certain doubts might arise, as to whether a substance is or is not a mineral; but we believe common understanding would place oil and gas under the "minerals" heading.

If doubt should exist, however, the legislative history of the 1964 amendment make it quite clear that Congress clearly intended the term to include both oil and gas. Prior to 1964, the list of words in section 715s which described the rights or the property whose disposition that section governed was nearly identical in appearance to the section's present list. The pre-1964 list read:

> . . . from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges . . .

The list presently reads:

> . . . from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand or gravel, from other privileges or from leases from public accommodations or facilities . . .

At the outset, the fact that the 1964 additions to the list were clearly not wholesale bespeaks a particular reason, clearly understood by Congress, for each addition. It is difficult to argue, then, that the word "minerals" could have been added, and used instead of a different, more limited word, without deliberate Congressional consideration of its reach. (Instructive here is the fact that one of the offered

alternatives to the bill (S. 1363) that became the 1964 Act did not include the word "minerals" in the list.) (S. 1720, 88th Congress, 2nd Session).

Other evidence in the legislative history also suggests the conclusion that oil and gas reserves were intended to fall within "mineral" revenues. In the report of the House Committee on the Merchant Marine and Fisheries on the 1964 amendment (H.R. Rept. No. 1753, 86th Cong., 2nd Session 1964) the Committee noted that it was possible—for reasons wholly unrelated to the scope of the word "minerals"—for the impending Supreme Court treatment of *Leiter Minerals, Inc.* v. *United States*, 329 F.2d 85 (5th Cir. 1963), to result in the United States (and the counties, under the amendment's receipts-sharing plan) being deprived of revenues from oil and gas leases from the Sabine Refuge. Since the Government could not be deprived of oil and gas revenues unless, except for the court case, it would receive them through the operation of the word "minerals," this concern reflects a clear belief, on the part of the House Committee, that when the Committee used the word "minerals," oil and gas were included.

Indeed, at the time of the 1964 amendment this apparently was also the interpretation accepted by the Department of the Interior. Secretary Udall, in describing the types of revenue-generating functions whose potential would be trapped by the refuge receipts account, spoke of the "oil" which was present at many refuge sites. (Hearings on S. 1363 before

the Senate Committee on Commerce, 88th Congress, 2nd Session, at 20 (1964)).

In our opinion, therefore, the 1964 amendment irreconcilably conflicts with the Mineral Leasing Act, as to the treatment of oil and gas revenues from withdrawn refuges.

From this it must be followed that, as to mineral receipts, it is irrelevant whether a refuge withdrawal order fails to include the Mineral Leasing Act within its explicit effect. The 1964 amendment applies to all refuges, a withdrawal order which had as its aim the establishment of a refuge with a receipt distribution system different than that required by the amendment would be, to the extent of such difference, the futile attempt of a federal agency to repeal a federal statute.

For similar reasons, the fact that mineral rights in an acquired refuge were already held by the United States when the refuge was acquired is irrelevant to the requirement that receipts enter the discrete account. The terms of the 1964 amendment do not tie the account's operation to a particular method of refuge acquisition. The amendment looks to the situation which exists after acquisition: if after acquisition, the lands form part of the National Wildlife Refuge System, and are primarily administered by the United States Fish and Wildlife Service, all receipts to which the United States is entitled from the disposition of oil and gas occurring within the refuge must enter the refuge receipts account.

APPENDIX E

[SEAL]

THE COMPTROLLER GENERAL
OF THE UNITED STATES
Washington, D.C. 20548

DECISION

FILE: B-118678 DATE: July 29, 1975

MATTER OF: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System.

DIGEST: Receipts from oil and gas leases on lands within the National Wildlife Refuge System, and administered by the Fish and Wildlife Service, whether the lands were made part of the System by acquisition or by withdrawal from the public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to the Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in the public lands, because, to the extent there is a conflict between the requirements of the statutes, the more recent one is controlling.

This decision is in response to a request from the Solicitor, Department of the Interior, asking whether we concur in the conclusion of a memorandum prepared by his office, that receipts from oil and gas leases on wildlife refuges created by withdrawals of

public lands are required to be reserved in the discrete refuge receipts account," established pursuant to 16 U.S.C. § 715s (1970) and distributed according to the scheme established thereby, rather than to be covered into the Treasury pursuant to the Mineral Leasing Act, 30 U.S.C. § 191, and distributed as are other mineral lease receipts under the latter act.

The question arises as a result of the 1964 amendment to 16 U.S.C. § 715s. Prior to the amendment, section 715s provided generally that 25 percent of the net proceeds from the sale or other disposition of "* * * surplus wildlife, or of timber, hay, grass or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges * * *" on national wildlife refuges was to be paid annually by the Secretary of the Treasury to the counties in which the refuges are located, to be used for public schools and roads. Refuges established under the Migratory Bird Conservation Act, or any other law, proclamation, or executive order, and administered by the United States Fish and Wildlife Service, were included.

Pub. L. No. 88-523, 78 Stat. 701, August 30, 1964, amended 16 U.S.C. § 715s to read in pertinent part as follows:

> "(a) *Beginning with the next full fiscal year* and *for each fiscal year thereafter, all revenues received* by the Secretary of the Interior *from the sale or other disposition of* animals, timber, hay, grass, or other products of the soil, *minerals,*

shells, sand, or gravel, from other privileges, * * * *during each fiscal year* in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, *shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed.* * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds *shall be expended solely for the benefit of public schools and reads as follows*:

> "(1) *to each county in which reserved* public lands in an area of the System are situated, an amount equal *to 25 per centum of the net receipts* collected by the Secretary from such reserved public lands in that particular area of the System * * *; and
>
> "(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, *either* (A) *three-fourths of 1 per centum of the cost of the areas,* * * * or (B) *25 per centum of*

> *the net receipts* collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive."

Among other changes which it made to section 715s, *the 1964 amendment added minerals to the list in subsection (a)*, quoted above, of sources of revenues in the refuge system *to be reserved in a separate fund in the Treasury* (referred to as the "refuge receipts account") *and to be distributed in accordance with subsection* (c).

The *Mineral Leasing Act*, originally enacted in 1920 (Act of February 25, 1920, ch. 85, 41 Stat. 437, as amended, 30 U.S.C. § 181 *et seq.* (1970)) authorizes the Secretary of the Interior to lease all lands subject to disposition thereunder which are known or believed to contain oil or gas deposits. 30 U.S.C. § 226 (1970). Lands subject to disposition include lands owned by the United States containing deposits of oil. 30 U.S.C. § 181. All moneys received from sales, bonuses, royalties, and rentals of public lands under the Mineral Leasing Act are required to be paid in to the Treasury. *Of those amounts, 37½ percent is to go to the State within which the lands are located for roads or schools; 52½ percent is to be paid into the fund established under the Reclamation Act* (43 U.S.C. § 371 *et seq.* (1970)) (*except in the case of Alaska, where this amount goes to the*

State). The remainder is to be credited to miscellaneous receipts.

The question presented is therefore whether receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be disposed of pursuant to the scheme of the Mineral Leasing Act or to that of the 1964 amendment of 16 U.S.C. § 715s. We conclude that disposition of receipts from mineral leases, including oil and gas leases, on lands within the National Wildlife Refuge System, is governed by 16 U.S.C. § 715s, and not by the Mineral Leasing Act.

We agree with the draft memorandum of the Solicitor that oil and gas are included in the term "minerals" in 16 U.S.C. § 715s, as amended. As the memorandum points out, the common understanding of the term "minerals" is that it includes oil and gas. Moreover, if there were any doubt that oil and gas were so included in this case, it would be resolved by the legislative history of the 1964 amendment. It is clear from that history that it was expected that the national wildlife refuge system would be the recipient of revenues from oil and gas. Thus, in reporting on S. 1363, 88th Congress, the bill which was the derivative source of the 1964 amendment to 16 U.S.C. § 715s, the House Committee on Merchant Marine and Fisheries discussed the potential effect of a pending Supreme Court decision which could deprive the United States of oil and gas revenues from a refuge in Louisiana on the income of the wildlife refuge system. H. Rep. No. 1753, 88th Cong.

2d Sess. 11. As the Solicitor's draft memorandum points out,

> "* * * Since the Government could not be deprived of oil and gas revenues unless, except for the court case, it would receive them through the operation of the word 'minerals,' this concern reflects a clear belief on the part of the House Committee, that when the Committee used the word 'minerals,' oil and gas were included."

In view of the requirement of 16 U.S.C. § 715s that revenues received by the Secretary for the sale or other disposition of minerals in connection with the national wildlife refuge system be disposed of as prescribed thereunder, and of the conclusion that oil and gas are minerals within the meaning of that section, there is an apparent conflict between section 715s and the Mineral Leasing Act, which prescribes a scheme for disposition of moneys received from leases of oil and gas on public lands different from that under 16 U.S.C. § 715s. The general rule of statutory construction in such circumstances is that in case of a conflict between a new provision and prior statutes relating to the same subject matter, the new provision, as the later expression of the legislature, is controlling. In accordance with this rule, we conclude that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s, as amended. We note that to hold otherwise, as the Solicitor's memorandum points out, would be to deprive section 715s(c)

(1) of title 16, prescribing a specific scheme of distribution for revenues from refuges created by reservation, of any meaning.

The Solicitor's memorandum notes that "refuge withdrawal orders," the administrative actions whereby lands are withdrawn from the public domain for refuge purposes, have commonly included a provision explicitly excluding the Mineral Leasing Act from the effect of the withdrawal. For example, Public Land Order 3999 (31 Fed. Reg. 6907 (1966)) provides for the addition to a wildlife refuge of certain lands by withdrawing them—

> "* * * from all forms of appropriation under the public land laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws * * *."

The question was raised whether this fact would change the foregoing conclusion.

If given effect, the exclusion from the withdrawal order of leasing under the mineral leasing laws could result in the distribution of proceeds of mineral leases on the withdrawn lands according to the Mineral Leasing Act rather than 16 U.S.C. § 715s. In view of our conclusion that the law requires proceeds of mineral leases on lands withdrawn from the public domain in order to become part of the national wildlife refuge system to be distributed according to 16 U.S.C. § 715s, the Secretary of the Interior is without authority to promulgate public land orders which would result in a different distribution of proceeds.

Accordingly, public land orders which purport to exclude the mineral leasing laws from withdrawal for wildlife refuge purposes are, to that extent, without effect.

Finally, the memorandum addresses the question whether the fact that, at the time of acquisition of certain refuge lands, the United States already held mineral rights with respect to such lands, would have any effect on the requirement for disposition of mineral receipts from such lands. The 1964 amendment to section 715s of title 16 contemplates no distinction in the method of disposition of refuge receipts according to the method of acquisition of the refuge. We agree with the memorandum that, if the lands acquired form part of the National Wildlife Refuge System after acquisition, and are primarily administered by the United States Fish and Wildlife Service, then 16 U.S.C. § 715s applies, requiring that all receipts to which the United States is entitled from the disposition of oil and gas resources within the refuge must enter the refuge receipts account.

/s/ Robert F. Keller
Deputy Comptroller General
of the United States

APPENDIX F

[SEAL]

THE COMPTROLLER GENERAL
OF THE UNITED STATES
Washington, D.C. 20548

DECISION

FILE: B-118678 DATE: June 11, 1976

MATTER OF: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System—Reconsideration

DIGEST: 1. Upon reconsideration, decision in 55 Comp. Gen. 117 (1975) is affirmed. Receipts from oil and gas leases on lands within National Wildlife Refuge System, and administered by Fish and Wildlife Service, whether lands were made part of System by acquisition or by reservation from public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in public lands.

2. Alaska Native Claims Settlement Act (ANCSA) of 1971 provides that mineral lease revenues are generally to be distributed as provided in

Alaska Statehood Act. Alaska Statehood Act prescribes no specific scheme of distribution but merely refers to Alaska's share of revenues distributed under Mineral Leasing Act. ANCSA does not adopt scheme of distribution in effect under Mineral Leasing Act in 1959, when Alaska Statehood Act was enacted, and therefore does not repeal by implication portion of 16 U.S.C. § 715s which is apparently in conflict with Mineral Leasing Act.

The Attorney General of Alaska has asked that we reconsider our decision, Matter of Disposition of Receipts From Leases of Oil and Gas Rights Within National Wildlife Refuge System, 55 Comp. Gen. 117 (1975). In that decision, we concluded that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be distributed pursuant to 16 U.S.C. § 715s(c) (1970), rather than pursuant to the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.* (1970). Upon consideration of the arguments of the Attorney General and the comments of the Solicitor of the Department of the Interior, we conclude that our decision must be affirmed.

Until it was amended in 1964, the Act of June 15, 1935, ch. 261, § 401, 49 Stat. 383, as amended, the statute which prescribed the disposition of receipts from "privileges" granted on national wildlife refuges, required that 25 percent of the receipts go to the counties in which the refuges were located. No

distinction was made between refuges on land reserved from the public domain and refuges acquired by purchase. The remaining 75 percent of revenues was appropriated by a permanent indefinite appropriation for the management of the refuges. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2-3 (1964).

Although the statute originally spoke of the sale of various specified items and "other privileges," it did not mention minerals, oil, or gas, and it was not interpreted to include receipts from oil and gas leases. Mineral lease receipts were disposed of pursuant to section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970) even where the leases were of lands in wildlife refuges, and regardless of whether the lands were reserved from the public domain or acquired. Under that statute, 37½ percent of lease receipts go to the State in which the land is located. Alaska receives an additional 52½ percent which, in the case of the other States, goes to the Reclamation Fund established by 43 U.S.C. §§ 371 *et seq.* (1970).

This system was altered in 1947 by the enactment of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.* (1970). That Act provides for disposition of receipts from oil and gas leases on acquired lands "* * * in the same manner as prescribed for other receipts from the lands affected by the lease * * *." 30 U.S.C. § 355 (1970). Thus, after the enactment of the Mineral Leasing Act for Acquired Lands, oil and gas lease receipts from *reserved* wildlife refuge lands remained subject to distribution

pursuant to the Mineral Leasing Act, but oil and gas lease receipts from *acquired* wildlife refuge lands were thereafter to be distributed in the same manner as other receipts from those lands, *i.e.*, in the manner prescribed by the Act of June 15, 1935, which was codified as 16 U.S.C. § 715s.

The 1964 amendment to section 715s of title 16 (the Act of August 30, 1964, Pub. L. No. 88-523, 78 Stat. 701) established a new scheme of distribution for refuge receipts from acquired lands, and added "minerals" to the list in the statute of sources of refuge receipts. We held, in 55 Comp. Gen. 117, *supra*, that the addition of "minerals" meant that, thereafter, receipts from oil and gas leases on refuge lands, whether reserved or acquired, were required to be distributed pursuant to 16 U.S.C. § 715s, as amended, rather than pursuant to the Mineral Leasing Act. The effect of this interpretation with respect to mineral receipts from reserved lands in Alaska is that, instead of 90 percent of the receipts going to the State as was the case under the Mineral Leasing Act, 25 percent is to go to the counties in which the lands are located, with the remainder going to a National Wildlife Refuge Fund.

The Attorney General of Alaska now contends that our interpretation is not correct. Rather, he argues, "* * * Congress intended [by the 1964 amendment of 16 U.S.C. § 715s] to continue the scheme for disposition of funds which was in existence prior to the amendment * * *," and that the 1964 amendment

was intended to apply only to wildlife refuges created from acquired lands.

The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s, and that to the extent the counties benefitted from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, *supra*. The Attorney General then notes that the only specific discussion of oil and gas lease revenues in the legislative history of the 1964 amendment to 16 U.S.C. § 715s is in the context of revenues from refuges created on acquired lands. He continues:

> "In light of the above, the question presented by the 1964 amendment to section 715s is whether by adding the term 'mineral' Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserve public domain pursuant to the Mineral Leasing Act of 1920; or did Congress intend to change the prior practice, so that oil and gas revenues from all wildlife refuges, regardless of their manner of creation, would be distributed pursuant to section 715s.
>
> "Since distribution of revenues under the Mineral Leasing Act and under section 715s is substantially different, in one case payments being made to States and the Reclamation Fund and in the other to counties and the Wildlife

Refuge Fund, it is highly unlikely that Congress would have intended to repeal the Mineral Leasing Act and replace it with section 715s without any discussion or comment by any of the parties affected. Yet, there is not one single acknowledgement in the legislative history of a change. Indeed, the legislative history makes clear beyond peradventure that none of the parties expected any change in the distribution of revenues from wildlife refuges reserved from the public domain.

"Certainly the Department of the Interior, which sponsored one of the bills which added the term 'minerals,' did not envision any change in the treatment of revenues from reserved wildlife refuges. The Secretary of the Interior testified that 'all of the revenues from refuge operations *on acquired lands* would be placed in a pool for equitable sharing by all the counties in which we have units of the national wildlife refuge system . . . As to *reserved public lands*, there would be no change in the present payment of 25 percent of net receipts from such lands' * * *."

The 1964 amendment to 16 U.S.C. § 715s reads in pertinent part as follows:

"(a) Beginning with the next full fiscal year and for each fiscal year thereafter all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System

that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive or public land order.

* * * * *

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

> "(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System * * *; and
>
> "(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. * * *

* * * * *

> "(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States * * *."

The Attorney General thus seeks to explain the addition to 16 U.S.C. § 715s of the reference to minerals as confirming "* * * the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920. * * *" The language of section 715s, as amended, compels a different conclusion. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas prescribed in subsections (c)(1) and (c)(2), both to counties in which acquired refuges are situated and to those in which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved lands, without doing violence to the plain meaning of the statute.

The Attorney General argues, in effect, that the Mineral Leasing Act, the Mineral Leasing Act for

Acquired Lands, and the 1964 amendment to section 715s, can be interpreted consistently only by assuming that the addition to the list of refuge products in section 715s of "minerals" was intended only to confirm the existing scheme of distribution whereby oil and gas revenues from leases on acquired lands were distributed to the counties by virtue of the Mineral Leasing Act for Acquired Lands. However, this interpretation makes the addition of the term "minerals" in subsections 715s(a) and (f) mere surplusage. The Mineral Leasing Act for Acquired Lands provides that all receipts from leases on acquired lands are to be paid into the same funds and distributed in the same manner as prescribed for other receipts from the lands affected by the lease. Hence, the addition of "minerals" to 16 U.S.C. § 715s was not necessary to continue the existing scheme of distribution with respect to acquired lands.

That is, the Congress could far more clearly have confirmed the existing practice, if indeed that had been its intent, by omitting the reference to "minerals" when it amended section 715s, or by stating explicitly the purported distinction between mineral lease revenues from acquired lands and from reserved lands. Thus, as already noted, the Attorney General's interpretation requires a strained reading of the language of 16 U.S.C. § 715s.

The Attorney General cites several elements of the legislative history of the 1964 amendment to 16 U.S.C. § 715s which, he contends, are consistent with

the view that the bills then under consideration to amend that section were understood at the time to be intended to affect revenues only on acquired lands. The Attorney General contends that the legislative history of the 1964 amendment permits no other conclusion.

The support for the Attorney General's position in the legislative history is neither explicit nor unambiguous. There are no statements in the legislative history to the effect that the addition of the word "minerals" was intended only to confirm the existing scheme of distribution. Rather, the Attorney General relies on statements to the effect that, for example, "* * * As to the reserved public lands within the system, there would be no change in the present payment of 25 percent of net receipts from such lands." H.R. Rep. No. 1753, 88th Cong., 2d Sess. 3 (1964). That statement, however, and other similar ones cited by the Attorney General, do not compel the conclusion that mineral lease receipts are not to be included in net receipts, with respect to reserved lands. The statements cited are consistent with the interpretation that, with respect to reserved lands, the 25 percent rate remains unchanged—in contrast to the situation with respect to acquired lands, where a new alternate rate was to be established—but that mineral receipts, formerly not part of the net receipts, are now to be included therein for both reserved and acquired lands.

In this connection, there are other statements in the legislative history which track the language of the statute:

> "[16 U.S.C. § 715s(a)] provides that * * * all revenues collected by the Secretary of the Interior from the disposition of certain specified products [including minerals] * * * shall be covered into a special fund in the U.S. Treasury to be expended without further appropriation as prescribed in subsection (c) of this section. * * *"
>
> * * * * *
>
> "[16 U.S.C. § 715s(c)(1)] would provide for the payment out of net receipts in the fund to each county in which reserved public lands within the national wildlife refuge system are located, an amount equal to 25 percent of the net receipts collected by the Secretary from such reserved lands in that particular area, as is the case under the present law. * * *" H.R. Rep. No. 1753, *supra*, 11.

The reference, at the close of the quotation, to continuing the system in effect "under the present law," may reasonably be understood, as contended above, to refer solely to the preservation of the 25 percent rate applicable to reserved lands receipts, as opposed to the establishment of an alternate ¾ of 1 percent rate applicable to receipts from acquired lands. On that assumption, this portion of the legislative history, and others to like effect, are fully consistent with the view that the amount payable to counties in which reserved wildlife refuge lands are

located is to be 25 percent of net receipts in the fund, including receipts from mineral leases.

As the Attorney General points out, the table which appears in the legislative history to show the effect of the pending bill on refuge revenues, shows no change in payments to Alaska with respect to revenues from refuges on reserved lands, whereas at least one of those refuges produced substantial oil revenues at the time. S. Rep. No. 1096, 88th Cong., 2d Sess. 13-21 (1964). It is not clear to us that the table, inserted to illustrate the particular difficulties the Department was having with respect to acquired lands, necessarily supports the interpretation urged by the Attorney General. If it does, the legislative history is to that extent at odds with the plain language of the statute.

There was considerable discussion in their respective submissions, by the Attorney General and the Solicitor of the Department of the Interior as to whether or not, in such circumstances, the "plain meaning" rule of statutory construction precludes consideration of the legislative history. In our view, even conceding that the legislative history is relevant, for the reasons discussed above, we do not find it to be so unequivocally supportive of the Attorney General's view as to justify us in ignoring the plain language of the statute.

The Attorney General argues further that the effect of the plain meaning rule, even if it were applicable, should in this case be overcome by the rule that implied repeals are disfavored. We said in our

earlier decision that "* * * there is an apparent conflict between section 715s and the Mineral Leasing Act * * *," (55 Comp. Gen. at 119), and that the later enactment, section 715s, was controlling. The Attorney General describes this as a repeal by implication of section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970), and relies on the general rule that repeal by implication is disfavored, citing *Morton* v. *Mancari*, 417 U.S. 535 (1974) and Sutherland, Statutory Construction, §§ 23.09, 23.10 (4th ed. Sands 1972). He asserts that the construction of the 1964 amendment which he urges would avoid the disfavored implied repeal.

The Sutherland treatise on statutory construction, while it states the rule that there is a presumption against repeal by implication, is actually quite critical of the mechanical application of that presumption, pointing out that it runs counter to the real probability that the purpose of new legislation is to change prior law, and in doing so to displace or repeal some part of it. Sutherland, § 23.10. The treatise goes on to say that—

> "* * * It is spurious and question begging to approach the decision of issues as to whether and how much a new law may have repealed provisions of earlier ones with a bias in the form of a presumption which contradicts probability." *Id.*

As to the application of this rule, the treatise makes it clear that it is not an absolute rule but merely a presumption which can be overcome:

> "When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.
>
> "Conversely, if the inconsistency between a later act and an earlier one is not fatal to the operation of either, the two may stand together and no repeal will be effected." *Id.*, § 23.09 (Footnotes omitted.)

In this case, it appears to us that the construction of the statute urged by the Attorney General is not a reasonable one, and therefore that the presumption against repeal by implication is overcome.

It should be noted that section 35 of the Mineral Leasing Act prescribes the disposition of all moneys received from sales, bonuses, royalties, and rental of public lands under the provisions of that act. Section 715s(f), as added in 1964, allows the Secretary to dispose of minerals on lands within the national wildlife refuge system "* * * upon such terms, conditions, or regulations * * * as the Secretary shall determine to be in the best interest of the United States * * *." Thus, the 1964 amendment to section 715s does not repeal section 35 of the Mineral Leasing Act in its entirety. Rather, its effect is to create an exception to the Mineral Leasing Act scheme of distribution of funds with respect to mineral rights on public domain lands withdrawn for wildlife refuge

purposes, without affecting the application of the Mineral Leasing Act to other public domain lands.

The Attorney General argues, in the alternative, that if the Mineral Leasing Act was impliedly repealed by the 1964 amendment to section 715s, "* * * that repeal would itself have been impliedly repealed and the Mineral Leasing Act reinstated with respect to public lands in Alaska by the Alaska Native Claims Settlement Act of 1971. * * *"

Section 9(d) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), provides as follows:

> "All bonuses, rentals, and royalties received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance." 43 U.S.C. § 1608(d) (Supp. IV, 1974).

The Attorney General reads this as an adoption of the scheme of distribution in effect in 1959, when Alaska was admitted into the Union, and he asserts

that this was the scheme of the Mineral Leasing Act, citing section 28(b) of the Statehood Act.

In response to this, the Solicitor states:

> "But the Alaska Statehood Act, § 28(b), does not provide that all federal mineral receipts in Alaska are to be distributed under the Mineral Leasing Act. It merely amends the Mineral Leasing Act to refer to Alaska as a State rather than a Territory. Thus, the Alaska Statehood Act merely refers to Alaska's share of the revenues which *are* distributed under the Mineral Leasing Act; it does *not* make any provisions as to *which* revenues are so distributed. Therefore, there is no apparent conflict between the Alaska Native Claims Settlement Act and 16 U.S.C. § 715s due to the citation in ANCSA of the Alaska Statehood Act * * *" (Emphasis in original.)

We find the Solicitor's argument convincing. Section 28(b) of the Alaska Statehood Act, approved July 7, 1958, Pub. L. No. 85-508, 72 Stat. 339, appears to be merely a technical amendment, intended to conform the Mineral Leasing Act to the new status of Alaska as a State rather than a Territory, without substantive effect. We find no indication that the 1971 Act was intended to revert to the scheme of distribution of mineral lease receipts in effect in 1959. We agree with the Solicitor that section 9(d) of the ANCSA did not effect an implied repeal of the 1964 amendment to 16 U.S.C. § 715s with respect to Alaska.

We recognize that our decision operates to deprive the State of Alaska of revenues. Nevertheless, in view of the foregoing, we are compelled to conclude that the statute should be carried out according to its terms unless expressly modified by subsequent legislative action of the Congress.

/s/ Elmer B. Staats
Comptroller General
of the United States

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JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1890

CECIL D. ANDRUS, ET AL.

v.

STATE OF ALASKA

No. 79-1904

KENAI PENINSULA BOROUGH

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED IN CECIL D. ANDRUS, ET AL. v. STATE OF ALASKA, MAY 30, 1980 AND IN KENAI PENINSULA BOROUGH v. STATE OF ALASKA, JUNE 2, 1980
PETITIONS FOR A WRIT OF CERTIORARI GRANTED OCTOBER 6, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1890

CECIL D. ANDRUS, ET AL.

v.

STATE OF ALASKA

No. 79-1904

KENAI PENINSULA BOROUGH

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

D.C. No. A 76-94 Civil and J 76-3 Civil (Consolidated)

KENAI PENINSULA BOROUGH, a Municipal Corporation,
PLAINTIFF-APPELLANT/APPELLEE

vs.

CECIL D. ANDRUS, DEFENDANT-APPELLANT/APPELLEE

STATE OF ALASKA, PLAINTIFF-APPELLEE

vs.

THOMAS S. KLEPPE, DEFENDANTS-APPELLANTS

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I, JoANN MYRES, CLERK of the above mentioned court do hereby certify that I am transmitting copies of the foregoing listed papers to the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit.

I also certify that the copies herewith transmitted are true and correct copies of originals filed in my office.

The papers herewith transmitted constitute the Record on Appeal pursuant to the Notice of Appeal and Designation of Record filed by Stipulation of Parties.

Dated this 22nd day of February, 1978.

JoANN MYRES, Clerk

By: /s/ Phyllis Choder
Deputy Clerk

Avrum M. Gross
Attorney General
State of Alaska
Pouch K, State Capitol
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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA, AT JUNEAU

J 76-3 CIV

[Filed Jul. 8, 1976]

STATE OF ALASKA, PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior,
WILLIAM E. SIMON, Secretary of the Treasury and
ELMER B. STAATS, Comptroller General, DEFENDANTS

COMPLAINT FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS

The State of Alaska, by and through its Attorney General, Avrum M. Gross, brings this action for declaratory relief and orders in the nature of mandamus against the above-named defendants.

First Claim for Relief

1. Jurisdiction for this claim is based on 28 U.S.C. §§ 1331, 1361.

2. Plaintiff is a sovereign State of the United States of America.

3. Defendant Thomas S. Kleppe, is the Secretary of the United States Department of the Interior and is sued here in his official capacity. Defendant Thomas S. Kleppe

is responsible for administration of public lands and laws relating thereto, including the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*

4. Defendant William E. Simon is Secretary of the United States Department of the Treasury and is sued here in his official capacity. Defendant William E. Simon is responsible for the receipt into the treasury and payment out of the treasury of certain money derived from the sale or lease of public land. 30 U.S.C. § 191.

5. Defendant, Elmer B. Staats is Comptroller General of the United States and is sued here in his official capacity. Defendant Elmer B. Staats is responsible, with defendant William E. Simon, for payment out of the treasury of money pursuant to the Mineral Leasing Act of 1920. 30 U.S.C. § 191, 31 U.S.C. §§ 47, 74, 147.

6. Under the Mineral Leasing Act of 1920 all money received by the United States for sales, bonuses, royalties and rentals of public land is paid into the Treasury of the United States. The Secretary of the Treasury is then required to pay 37½% of the revenue so received to the State in which the public land is located. An additional 52½% of the revenue is to be paid into the Reclamation Fund created under the Reclamation Act of June 17, 1902, except that for revenue derived from public land located in Alaska this 52½% is to be paid to the State of Alaska rather than into the Reclamation Fund. 30 U.S.C. § 191, Alaska Statehood Act, § 28(b), 72 Stat. 339.

7. Prior to an amendment in 1964, the Act of June 15, 1935, provided that revenue from the sale or other disposition of "surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand or gravel, or other privileges" from a wildlife refuge was to be paid into the United States Treasury and the distributed from the Treasury, 25% to the county (or counties) in which the refuge was located and 75% into a special Wildlife Fund. § 410, 49 Stat. 383.

8. Under the Act of June 15, 1935, those counties which contained Wildlife refuges from which large quan-

tities of the enumerated products were sold received large payments from the United States while those counties which contained wildlife refuges from which small amounts were sold received only small payments.

9. The Migratory Bird Conservation Act, 16 U.S.C. § 715 *et seq.* empowers the Secretary of the Interior to acquire wet lands and other habitat essential to the preservation of waterfowl. Under the Act, the Governor of the State in which land to be acquired is located must give his approval to the acquisition. 16 U.S.C. § 715f.

10. Since acquisition by the United States of waterfowl habitat land often meant withdrawal of the land from the local property tax base with little prospect that federal revenues equivalent to the lost revenues would be received, the Secretary of the Interior found it difficult to obtain the approval of Governors in effected States.

11. To solve this problem, Congress amended the Act of June 15, 1935 in 1964. Revenues derived from products produced on wildlife refuges created from *reserved* public land would continue to be distributed as they had been in the past; but revenue from wildlife refuges created from *acquired* land (which would be the case for waterfowl habitat areas acquired under the Migratory Bird Conservation Act) would be distributed according to a formula which allowed each county in which a wildlife refuge with acquired land was located to choose either 25% of the revenue received by the United States from that refuge or ¾ of 1% of the cost of the land adjusted to represent current value. 16 U.S.C. § 715s.

12. The 1964 amendment also added the term "minerals" to the list of enumerated products to which the Act of June 15, 1935 was applicable. 16 U.S.C. § 715s.

13. At some date, unknown to plaintiff, but assumed to be before July 1, 1975, the Director of the United States Fish and Wildlife Service sought an opinion from the Solicitor, U.S. Department of the Interior, concerning the 1964 amendment to the Act of June 15, 1935.

14. The memorandum of the Solicitor to the Director of the U.S. Fish and Wildlife Service began its analysis

of the relationship between the Act of June 15, 1935, the 1964 amendment thereto, and the Mineral Leasing Act of 1920 by first determining that the term "minerals" included oil and gas. The Solicitor then determined that the legal issue he must decide was "whether, insofar as federal receipts from the [wildlife] Refuge System are concerned, there is an 'irreconciliable conflict' between" the Mineral Leasing Act of 1920, 30 U.S.C. § 191 and the 1964 amendment, 16 U.S.C. § 715s. The Solicitor concluded an "irreconciliable conflict" did exist and further determined that the 1964 amendment, being later in time, was to govern the distribution of receipts from all wildlife refuges.

15. The Solicitor, evidently uncertain about his conclusion, asked the Comptroller General of the United States if he concurred with the opinion.

16. In a decision, issued July 29, 1975, the Comptroller General, acting through his deputy, stated his concurrence. The Comptroller General's decision adopted the same reasoning as the memorandum of the Solicitor.

17. Upon learning of the Comptroller General's decision, the State of Alaska, acting through its Attorney General, requested the Comptroller General to reconsider his decision. Alaska presented to the Comptroller General evidence from the legislative history of the 1964 amendment which demonstrated that the Mineral Leasing Act of 1920 and the 1964 amendment to the Act of June 15, 1935 were not irreconcilably in conflict.

18. Alaska's evidence revealed that Congress only intended to ratify the system of receipt and distribution which existed prior to 1964 insofar as oil and gas revenue was concerned. For wildlife refuges created from *reserved* public land, the land was to be leased according to the Mineral Leasing Act of 1920 and revenues distributed according to the terms of that Act.

19. Revenue from oil and gas produced from wildlife refuges created from *acquired* land was to be distributed according to the terms of 16 U.S.C. § 715s not because

that provision of law commanded it, but because the Mineral Leasing Act for Acquired Lands 30 U.S.C. § 351 *et seq.* required such distribution. That Act provides as follows:

> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress. 30 U.S.C. § 355

20. Because the Solicitor and the Comptroller General did not identify in their memorandum and decision, respectively, the different treatment accorded oil and gas revenues from wildlife refuges created from reserved public land and those created from acquired land, they erroneously concluded that the 1964 amendment to the Act of June 15, 1935 impliedly repealed the Mineral Leasing Act of 1920, when in fact the amendment was intended only to confirm the existing distinction between reserved and acquired wildlife refuges.

21. On February 13, 1976, while the Comptroller General still had Alaska's request for reconsideration under advisement, the Secretary of the Interior, acting through his agent, A. J. Ondrof, Acting Assistant Director for Administration, withheld payment to Alaska of $2,945,212.12, the sum attributable to production of mineral resources from wildlife refuges and payable to Alaska under the Mineral Leasing Act of 1920, if that

Act is applicable to mineral production on wildlife refuges created from reserved public land. The Secretary's action in withholding payment was taken despite the fact that between 1964 when the amendment was first enacted and February 13, 1976 biannual payments of several million dollars have been made to Alaska pursuant to the Mineral Leasing Act.

22. On June 11, 1976 the Comptroller General issued a decision responsive to Alaska's request for reconsideration. That decision reaffirmed the Comptroller General's earlier decision and the memorandum of the Solicitor, U.S. Department of the Interior.

23. Since the Comptroller General's decision of June 11, 1976 neither the Secretary of the Interior nor the Secretary of the Treasury has paid to Alaska the $2,945,212.12 which is Alaska's 90% share of the revenue received from mineral production on wildlife refuges created from reserved public land located in Alaska. Alaska believe no such payments will be made in the future.

24. The action of the Secretary of the Interior, is injurious to the State of Alaska in that it deprives Alaska of almost 3 million dollars which should have been paid to Alaska in February, 1976 and further that Alaska expects it will be deprived of an approximately similar payment which will be due in August, 1976, and all payments due thereafter.

25. The actions of the Secretary of the Interior and the Secretary of the Treasury in refusing to make payment to Alaska are unlawful because the Mineral Leasing Act of 1920 imposes upon these officials a mandatory duty to make payment to Alaska of 90% of the revenue received from mineral development on wildlife refuges created from reserved public land.

26. In refusing to make payment to Alaska, the Secretary of the Interior and the Secretary of the Treasury have exceeded their statutory authority.

Second Claim for Relief

27. Jurisdiction for this claim is based on 28 U.S.C. § 1331, 1361 and 5 U.S.C. § 701 *et seq.*

28. Paragraphs 1 to 26 are realleged and incorporated as if fully stated herein.

29. The Comptroller General has acted without legal authority by issuing a legal opinion of concurrence with a memorandum of the Solicitor of the U.S. Department of the Interior.

30. Even if the Comptroller General possesses legal authority to issue the opinion, he has acted unlawfully and beyond the scope of his authority because he has incorrectly concluded that the 1964 amendment to the Act of June 15, 1935 supersedes the Mineral Leasing Act of 1920.

WHEREFORE, plaintiff prays judgment as follows:

31. That this court issue an order declaring that the 1964 amendment to the Act of June 15, 1935 did not repeal or otherwise supersede the Mineral Leasing Act of 1920 insofar as distribution of federal receipts from mineral production on wildlife refuges reserved from public domain is concerned.

32. That this court issue an order commanding the Secretaries of the Interior and Treasury to perform their mandatory duty to pay to the State of Alaska, 90% of the revenue received by the United States from mineral production on wildlife refuges located in Alaska.

33. That this court issue an order declaring the July 29, 1975 and June 11, 1976 decisions of the Comptroller General invalid and of no legal effect.

34. For such other relief as may appear reasonable and proper.

Dated this 8 day of July, 1976.

AVRUM M. GROSS
Attorney General

By: /s/ Frederick H. Boness
FREDERICK H. BONESS
Assistant Attorney General
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
AT ANCHORAGE

Case No. A76-94 CIV

[Filed May 14, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT, WRIT OF MANDATE AND INJUNCTION

Plaintiff alleges:

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. 28 U.S.C. § 1361 in that this is an action in mandamus to compel the Secretary of the Interior to perform his duties under 16 U.S.C. § 715s(c), as more fully hereinafter appears.

2. Plaintiff, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963 which assumed the functions of such municipality on January 1, 1964.

3. Defendant, Thomas S. Kleppe, is the Secretary of the Interior and as such is charged with the administration of 16 U.S.C. § 715s(c).

FIRST CLAIM FOR RELIEF

4. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula, Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

5. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and a political subdivision of the State of Alaska.

6. Plaintiff is informed and believes and upon such information and belief alleges that since July 1, 1975, defendant Secretary of the Interior has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, plaintiff is informed and believes and upon such information and belief, alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain Federal oil and gas leases on lands situate within the Kenai National Moose Range.

7. Pursuant to 16 U.S.C. § 715s(c)(1), defendant, Secretary of the Interior, at the end of the current fiscal year, shall pay from the said receipts described in Paragraph 6 (after payment of necessary expenses), including all receipts hereinafter received for the current fiscal year an amount equal to 25% of such net receipts to plaintiff, Kenai Peninsula Borough; said monies to be expended solely for the benefit of public schools and roads.

8. Plaintiff is informed and believes and upon such information and belief alleges that defendant will not pay the 25% share of said net receipts to plaintiff. The reasons upon which this allegation is made include but are not limited to the following:

a. Plaintiff is informed and believes and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue originating as described in Paragraph 6, and that no payment of any portion thereof has been made to plaintiff.

b. On March 31, 1976, demand was made upon the General Accounting Office of the United States with a copy of such demand to the Solicitor of the Department of the Interior, that all proceeds from Federal oil and gas leases on the Kenai National Moose Range be distributed according to the provisions of 16 U.S.C. § 715s (c). A copy of said letter is attached as Exhibit "A" to this Complaint. Plaintiff has received no indication that its request will be complied with.

c. Plaintiff is informed and believes and upon such information and belief alleges that in years prior to the fiscal year ending June 30, 1976, the proceeds from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, have been erroneously distributed under color of 30 U.S.C. § 191; more specifically 37½% thereof to the State of Alaska for the construction and maintenance of public roads or the support of public schools and 52½% thereof to the State of Alaska to be expended as the legislature directs. Plaintiff has received no indication that the proceeds from such oil and gas leases for the fiscal year ending June 30, 1976, will not be distributed in any manner other than as in prior fiscal years.

9. Plaintiff, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that plaintiff, Kenai Peninsula Borough, is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant, the Secretary of the Interior, to pay to plaintiff an amount equal to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

SECOND CLAIM FOR RELIEF

10. Incorporated herein by reference are Paragraphs 1 through 4, inclusive, of this Complaint.

11. Plaintiff is informed and believes, and upon such information and belief, alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, plaintiff is informed and believes, and upon such information and belief, alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain Federal oil and gas leases on lands situate within the Kenai National Moose Range.

12. Plaintiff is informed and believes and upon such information and belief alleges that said revenue has been erroneously distributed by defendant in that:

a. Under color of 30 U.S.C. § 191, 37½% thereof was paid to the State of Alaska for the construction and maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs;

b. Twenty-five percent (25%) of the net receipts from Federal oil and gas leases situate in the Kenai National Moose Range, Alaska (less necessary expenses) for all fiscal years since July 1, 1965, and possibly earlier, should have been paid to plaintiff by defendant in accordance with 16 U.S.C. § 715s(c)(1). Plaintiff has received no revenue pursuant to said section.

13. Defendant has a duty to recover for plaintiff that portion of twenty-five percent of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses) heretofore erroneously distributed since July 1, 1965, or before.

14. Plaintiff is informed and believes, and based upon such information and belief, alleges that defendant will not perform his duty as set forth in Paragraph 13. The reasons upon which this allegation is made include but are not limited to the following:

a. Plaintiff is informed and believes and upon such information and belief alleges that since March 16, 1976, or earlier, defendant has been aware of the erroneous payments described in Paragraph 12. Nevertheless, defendant has taken no action, known to plaintiff, to rectify such error.

15. Plaintiff, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that plaintiff Kenai Peninsula Borough is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965, through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 2201, a judgment declaring that defendant has a duty to recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from

Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses) heretofore erroneously distributed, and thereafter to pay said receipts to plaintiff all in accordance with 16 U.S.C. § 715s(c).

c. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant: (1) to recover for plaintiff that portion of 25% of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed; (2) after such recovery to pay the amount thereof due to plaintiff in accordance with 16 U.S.C. § 715s(c).

THIRD CLAIM FOR RELIEF

16. Incorporated herein by reference are Paragraphs 1 through 7, inclusive, 11, 12 and 13 of the complaint.

17. The amount of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965 and possibly earlier, is unknown to plaintiff.

18. The manner in which the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, has been distributed and is unknown to plaintiff.

19. Plaintiff is entitled to an order of this Court that defendant render an accounting as follows:

a. An itemization of the amount of net revenue, by fiscal year, derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, commencing July 1, 1965 through the present fiscal year.

b. An itemization of the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant.

(2) The entity receiving said payments from defendant.

(3) The date said payments were made by defendant.

FOURTH CLAIM FOR RELIEF

20. Incorporated herein by reference are Paragraphs 1 through 15, inclusive, of the Complaint.

21. Unless defendant is enjoined and restrained during the pendency of this action from distributing the net revenue from Federal oil and gas leases within the Kenai National Moose Range, in any manner, or in the alternative, only in accordance with 16 U.S.C. § 712s(c)(1), plaintiff will suffer great and irreparable damage.

2. Plaintiff has no adequate remedy at law.

WHEREFORE, PLAINTIFF PRAYS that this Court enter judgment granting relief as follows:

A. *AS TO THE FIRST CLAIM FOR RELIEF*

1. A judgment declaring that plaintiff is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

2. A judgment in the nature of mandamus compelling defendant to pay to plaintiff an amount equal to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

3. For costs of suit for such further relief as the court may deem proper, including a reasonable attorney's fees.

B. *AS TO THE SECOND CLAIM FOR RELIEF*

1. A judgment declaring that plaintiff is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period

July 1, 1965 through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

2. A judgment declaring that defendant has a duty to recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed.

3. A judgment in the nature of mandamus compelling defendant:

(a) To recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from Federal oil and gas leases situated within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed;

(b) After such recovery of the amount of receipts erroneously distributed, or any part thereof, to pay the amount thereof due plaintiff in accordance with 16 U.S.C. § 715s(c).

4. For such further relief as the Court may deem proper, including a reasonable attorney's fee.

C. *AS TO THE THIRD CLAIM FOR RELIEF*

1. A judgment that defendant render to plaintiff an accounting:

a. Itemizing the amount of net revenue by fiscal year, derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska;

b. Itemizing the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant;

(2) The entity receiving said payments from defendant;

(3) The date said payments were made by defendant.

2. For such further relief as the Court may deem proper, including a reasonable attorney's fee.

D. *AS TO THE FOURTH CLAIM FOR RELIEF*

1. An order enjoining defendant during the pendency of this action from distributing the net revenue from Federal oil and gas leases situate within the Kenai National Moose Range, in any manner, or in the alternative only in accordance with 16 U.S.C. § 712s (c) (1).

2. For costs of suit.

3. For such further relief as the Court may deem proper including a reasonable attorney fee.

DATED at Anchorage, Alaska, this 3 day of May, 1976.

GALLAGHER, CRANSTON & SNOW

By /s/ Charles K. Cranston
Charles K. Cranston
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

[Filed Aug. 12, 1976]

No. A-76-94 Civil

KENAI PENINSULA BOROUGH, PLAINTIFF

v.

THOMAS S. KLEPPE, DEFENDANT

No. J76-3 Civil

STATE OF ALASKA, PLAINTIFF

v.

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

MEMORANDUM AND ORDER

THIS CAUSE comes before the court on plaintiff's motion to consolidate and defendant's motion to dismiss.

Plaintiff seeks to consolidate this case with another presently pending before this court, *State of Alaska* v. *Kleppe, et al*, J-76-3. The motion is unopposed (*See* Local Rule 5(B)(4).

Defendant's motion to dismiss is based on the theory that the State of Alaska is an indispensable party to this action. Because of the court's ruling on the motion for consolidation that ground no longer has merit.

IT IS ORDERED:

1. THAT this action be consolidated with J76-3, presently pending before this court.

2. THAT future papers, motions, and filings in this case be numbered A76-94.

THAT defendant's motion to dismiss is denied.

4. THAT the deputy Clerk of Court at Juneau forthwith transfer the file in cause J76-3 to the Clerk at Anchorage.

DATED at Anchorage, Alaska this 12th day of August 1976.

/s/ Illegible
United States District Judge

cc: Charles K. Cranston
G. Kent Edwards, U.S. Attorney
Avrum Gross, Attorney General for the State of Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

[Filed Jun. 17, 1976]

No. A76-94 Civil

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

v.

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

ORDER

THIS CAUSE comes before the court upon plaintiff's motion for a preliminary injunction. In view of the affidavit of Tim Tafoya and without intimating any views whatsoever on the merits of this controversy,

IT IS ORDERED:

THAT the net revenue from the Federal oil and gas leases located within the Kenai National Moose Range be held in the suspense account numbered 14 x 685 pending a final determination of this action;

THAT in view of the above, the motion for preliminary injunction is denied without prejudice.

DATED at Anchorage, Alaska, this 17th day of June, 1976.

/s/ [Illegible]
United States District Judge

cc: U.S. Attorney
Charles K. Cranston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A76-94 CIV.

[Filed Sep. 1, 1976]

KENAI PENINSULA BOROUGH, PLAINTIFF

v.

THOMAS S. KLEPPE, DEFENDANT

No. J76-3 CIV.

STATE OF ALASKA, PLAINTIFF

v.

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

ANSWER TO STATE OF ALASKA'S COMPLAINT FOR DECLARATORY RELIEF

Defendants THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury, and ELMER B. STAATS, Comptroller General, by and through their undersigned attorneys, in response to the STATE OF ALASKA's Complaint for Declaratory Relief and Order of Mandamus, hereby allege, admit and deny as follows:

FIRST CLAIM OF RELIEF

1. Defendants admit the allegations of paragraphs 1, 2, 3 and 4.

2. With respect to paragraph 5, defendants admit that ELMER B. STAATS is Comptroller General of the

United States and is being sued in his official capacity, but deny that he is responsible with defendant WILLIAM E. SIMON for payment out of the Treasury of money pursuant to the Mineral Leasing Act of 1920.

3. Defendants admit the first two sentences of paragraph 6 and deny the third sentence of said paragraph.

Defendants aver that the Federal Coal Leasing Amendments Act of 1975 provides that instead of an additional 52½ percent of the revenue to be paid into the Reclamation Fund, 40 percent is to be paid into that fund, with the remaining 12½ percent to be paid to the state for use in impacted areas; that Alaska, however, would still receive the total 52½ percent since that provision of the Mineral Leasing Act was not affected by the recent amendments.

4. With respect to paragraph 7, defendants deny that the Act of June 15, 1935 is accurately quoted and deny that said Act made provision for payment of the remaining 75 percent into a "special Wildlife Fund" as alleged by plaintiff.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and therefore deny same.

6. The allegations of paragraphs 9 and 10 contain characterizations of Acts and of the intent of Congress. These conclusions are not susceptible to responses as answers to the Complaint. The language of the cited Acts speaks for itself.

7. The allegations of paragraph 11 are denied with the exception of the first sentence. Defendants admit that Congress amended the Act of June 15, 1935 in 1964 as alleged in the first sentence of paragraph 11.

8. Defendants admit the allegations of paragraphs 12 and 13.

9. Defendants admit the allegations of paragraph 14 except to allege that the Solicitor's opinion was a draft and was never sent to the Director.

10. Defendants deny the allegations of paragraph 15 and allege that the Comptroller General's opinion was

requested pursuant to 31 U.S.C. § 74, since this was a question involving a payment to be made by the head of an executive agency.

11. With respect to paragraph 16, defendants admit that a decision was issued July 29, 1975 by the Comptroller General acting through the Deputy Comptroller General and that on specified points, the Comptroller General's reasoning and the Solicitor's reasoning were the same. The remaining allegations of paragraph 16 are denied and defendants specifically deny that the Comptroller General "adopted" the reasoning of the Solicitor, since each conclusion of the Comptroller General was based on the result of his independent research and judgment.

12. With respect to the allegations of paragraph 17, defendants admit that State of Alaska, acting through its Attorney General, requested that the Comptroller General reconsider his decision, and that Alaska presented evidence from the legislative history of the 1964 amendment. The remainder of the averment of paragraph 17 states a conclusion of law which goes to the merits of this matter and is not susceptible to response as an answer to the Complaint.

13. The allegations of paragraphs 18 and 19 state conclusions of law not susceptible to response as answers to the Complaint.

14. With respect to the allegations of paragraph 20, defendants deny that the Solicitor and the Comptroller General did not identify the different statutory treatment accorded revenues derived from reserved public lands and those derived from acquired land. The remainder of the averment states a conclusion of law, not susceptible to response as an answer to the complaint.

15. Defendants admit the allegations of paragraphs 21 and 22.

16. With respect to the allegations of paragraph 23, defendants admit that no money has been paid or is intended to be paid to the State of Alaska since the Comp-

troller General's decision of June 11, 1976, but deny that the sum quoted is Alaska's share of the revenue received.

17. Defendants deny the allegations of paragraph 24 and affirmatively allege that Alaska is not lawfully entitled to the sums alleged.

18. Defendants deny the allegations of paragraphs 25 and 26.

SECOND CLAIM FOR RELIEF

19. Defendants admit the allegations of paragraph 27.

20. In response to paragraph 28, the defendants incorporate their answers to paragraphs 1 through 26 as though fully set forth herein.

21. Defendants deny the allegations of paragraphs 29 and 30.

22. All averments not specifically admitted are denied.

FIRST AFFIRMATIVE DEFENSE

23. The court is without jurisdiction to grant the relief requested in paragraphs 31 and 32 of the Complaint.

CONCLUSION

WHEREFORE, defendants request that plaintiff takes nothing by their Complaint, that the Complaint be dismissed with costs and attorney fees taxed to plaintiff, and for such further relief as may be appropriate.

DATED this 1st day of September, 1976, at Anchorage, Alaska.

G. KENT EDWARDS
United States Attorney

By: /s/ John D. Roberts
JOHN D. ROBERTS
Assistant U.S. Attorney

CHARLES K. CRANSTON, Esq.
Gallagher, Cranston & Snow
310 "K" Street, Suite 500
Anchorage, Alaska 99501

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

[Filed Sep. 1, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

ANSWER OF KENAI PENINSULA BOROUGH TO COMPLAINT OF STATE OF ALASKA FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS

COMES NOW the plaintiff, Kenai Peninsula Borough, and in answer to the Complaint of the State of Alaska for Declaratory Relief and Orders of Mandamus in this consolidated action, hereby alleges, admits and denies as follows:

1. Plaintiff admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 22 of the Complaint.

2. Plaintiff states that in answer to the allegations contained in paragraph 7, the text of 16 U.S.C. § 715s speaks for itself prior to its amendment in 1964.

3. Plaintiff states that in answer to the allegations contained in paragraphs 8, 10, 13, 14, 15, 21, and 23, it is withoug sufficient information or belief to enable it

to answer same, and on that basis denies each and every allegation contained therein.

4, Plaintiff states that in answer to the allegation contained in paragrph 9 and 11, the provisions of 16 U.S.C. § 715 *et seq.* speak for themselves and need no further elaboration and except as herein stated, deny each and every allegation contained in paragraph 11.

5. Plaintiff states that in answer to the allegations contained in paragraph 12, and text of 16 U.S.C. § 715s as amended in 1964, speaks for itself and needs no further elaboration.

6. Plaintiff states that in answer to the allegations contained in paragraph 16, the Comptroller General issued an opinion, dated July 29, 1975, relative to the subject matter of this litigation, and except as herein stated is without sufficient information or belief to enable it to answer the remaining allegations of said paragraph, and on that basis denies each and every such allegations.

7. Plaintiff admits that allegations contained in paragraph 17 in that the State of Alaska, acting through its Attorney General, requested the Comptroller General to reconsider his decision and presented its argument in support of its position. Plaintiff, Kenai Peninsula Borough, denies the validity of the arguments advanced by the Attorney General.

8. Plaintiff denies the allegations contained in paragraphs 18, 19, 20, 24, 25, 26, 29, and 30.

9. Plaintiff admits the allegations contained in paragraph 27.

10. Plaintiff, in answer to the allegations contained in paragraph 28, incorporates its answer to the allegations contained in paragraphs 1 through 26, inclusive, of the

WHEREFORE, plaintiff, Kenai Peninsula Borough, prays for judgment as follows:

1. That the Complaint herein be dismissed;

2. That the relief prayed for by the Kenai Peninsula Borough in its Complaint against Thomas S. Kleppe be granted; and

3. For such other or further relief as the court may deem proper.

DATED at Anchorage, Alaska, this 31 day of August, 1976.

GALLAGHER, CRANSTON & SNOW
Attorneys for Plaintiff

By /s/ Charles K. Cranston
CHARLES K. CRANSTON

Copy Received this 31 day of August, 1976.

/s/ [Illegible]
U.S. Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J76-3 & A76-94 Consolidated

[Filed Dec. 10, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

v.

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

ORDER

THIS CAUSE comes before the court on Kenai Peninsula Borough's motion to intervene as a defendant and for an order permitting filing of an answer, counterclaim and crossclaim in J76-3. This motion was unopposed and is therefore well taken. Local Rule 5(b) (4).

Accordingly IT IS ORDERED:

1. THAT the motion to intervene as a defendant is granted.
2. THAT the answer, counterclaim and crossclaim of the intervening party is deemed filed as of this date.
3. THAT the other parties will appropriately respond within 20 days of this order.

DATED at Anchorage, Alaska, this 10th day of December, 1976.

/s/ [Illegible]
United States District Judge

cc: Charles K. Cranston
U.S. Attorney

CHARLES K. CRANSTON, Esq.
Gallagher, Cranston & Snow
310 "K" Street, Suite 500
Anchorage, Alaska 99501

Attorneys for Plaintiff and
Intervening Defendant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

[Filed Dec. 10, 1976]

KENAI PENINSULA BOROUGH, PLAINTIFF,

vs.

THOMAS S. KLEPPE, DEFENDANT.

STATE OF ALASKA, PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

and

KENAI PENINSULA BOROUGH, INTERVENING DEFENDANT

ANSWER OF KENAI PENINSULA BOROUGH TO COMPLAINT OF STATE OF ALASKA FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS, COUNTERCLAIM AND CROSS-CLAIM

ANSWER

Kenai Peninsula Borough, intervenor, in answer to the Complaint of the State of Alaska for Declaratory Relief and Orders of Mandamus in this consolidated action, hereby alleges, admits and denies as follows:

1. Admits the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 22 of the complaint.

2. States that in answer to the allegations contained in paragraph 7, the text of 16 U.S.C. § 715s speaks for itself prior to its amendment in 1964.

3. States that in answer to the allegations contained in paragraphs 8, 10, 13, 14, 15, 21 and 23, it is without sufficient information or belief to enable it to answer same, and on that basis denies each and every allegation contained therein; except that to the extent any documents or opinions are mentioned in said paragraphs, said documents or opinions speak for themselves.

4. States that in answer to the allegations contained in paragraphs 9 and 11, the provisions of 16 U.S.C. § 715 *et seq.*, speak for themselves and need no further elaboration, and except as herein stated, deny each and every allegation contained in paragraph 11.

5. States that in answer to the allegations contained in paragraph 12, and text of 16 U.S.C. §715s as amended in 1964, speaks for itself and needs no further elaboration.

6. States that in answer to the allegations contained in paragraph 16, the Comptroller General issued an opinion, dated July 29, 1975, relative to the subject matter of this litigation, and except as herein stated is without sufficient information or belief to enable it to answer the remaining allegations of said paragraph, and on that basis denies each and every such allegation; except that the Comptroller General's opinion speaks for itself.

7. Admits the allegations contained in paragraph 17 in that the State of Alaska, acting through its Attorney

General, requested the Comptroller General to reconsider his decision and presented its argument in support of its position. The Kenai Peninsula Borough denies the validity of the arguments advanced by the Attorney General.

8. Denies the allegations contained in paragraphs 18, 19, 20, 24, 25, 26, 29 and 30; except that the statutes referred to therein speak for themselves.

9. Admits the allegations contained in paragraph 27.

10. In answer to the allegations contained in paragraph 28, incorporates its answer to the allegations contained in paragraphs 1 through 26, inclusive, of the First Claim for Relief.

COUNTERCLAIM AGAINST STATE OF ALASKA

The Kenai Peninsula Borough, hereinafter called intervenor, for a counterclaim against the State of Alaska alleges:

FIRST CLAIM FOR RELIEF

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. This court may adjudicate the matters raised in this counterclaim by assuming pendent jurisdiction, *Hurn* v. *Oursler*, 289 U.S. 238 (1933).

2. Counterclaimant and intervenor, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963, and assumed the functions of such municipality on January 1, 1964.

3. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula,

Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

4. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and political subdivision of the State of Alaska.

5. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, intervenor is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases situate within the Kenai National Moose Range.

6. Intervenor is informed and believes, and upon such information and belief alleges that during all fiscal years since July 1, 1965, and possibly earlier, the State of Alaska has erroneously received the share of the Kenai Peninsula Borough to the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses). Said 25% share of such receipts should have been paid to the Kenai Peninsula Borough in accordance with 16 U.S.C. § 715s(c)(1), but has not.

7. The Kenai Peninsula Borough has been paid none of such money erroneously received by the State of Alaska, and the State of Alaska continues to withhold said money from the Kenai Peninsula Borough.

8. Intervenor is entitled to judgment ordering the State of Alaska to pay to the Kenai Peninsula Borough an amount equal to 25% of the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses), to the extent such amounts have been erroneously paid to the State of Alaska.

SECOND CLAIM FOR RELIEF

9. Incorporated herein by reference are paragraphs 1 through 8 of the First Claim for Relief.

10. The amount of net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965, and possibly earlier, is unknown to Kenai Peninsula Borough.

11. The exact amount of money received by the State of Alaska is unknown to Kenai Peninsula Borough.

12. Kenai Peninsula Borough is entitled to an order of this court that the State of Alaska render an accounting as follows:

a. An itemization of the amount of net revenue, by fiscal year, derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, by the State of Alaska;

b. The date of such payments and the years to which such payments were attributable.

CROSS-CLAIM

Intervenor alleges:

FIRST CLAIM FOR RELIEF

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. 28 U.S.C. § 1361 is that this is an action in mandamus to compel the Secretary of the Interior, the Secretary of the Treasury and the Comptroller General perform their duties under 16 U.S.C. § 715s(c), as more fully hereinafter appears.

2. Intervenor, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963; and assumed the functions of such municipality on January 1, 1964.

3. Defendant, Thomas S. Kleppe, is the Secretary of the Interior and as such is charged with the administration of 16 U.S.C. §715s(c). Defendant, William E. Simon, is Secretary of the Treasury, and Elmer B. Staats is Comptroller General of the United States. Each official has some responsibility to recover for the United States money it has erroneously paid.

4. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula, Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

5. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and a political subdivision of the State of Alaska.

6. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1975, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, Kenai Peninsula Borough is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases on lands situate within the Kenai National Moose Range.

7. Pursuant to 16 U.S.C. § 715s(c)(1), defendant, Secretary of the Interior, at the end of the current fiscal year, shall pay from the said receipts described in paragraph 6 (after payment of necessary expenses), including all receipts hereinafter received for the current fiscal year, an amount equal to 25% of such net receipts to

intervenor, Kenai Peninsula Borough; said monies to be expended solely for the benefit of public schools and roads.

8. Intervenor is informed and believes, and upon such information and belief alleges that defendant, Secretary of the Interior, will not pay the 25% share of said net receipts to intervenor. The reasons upon which this allegation is made include, but are not limited to, the following:

a. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue originating as described in paragraph 6, and that no payment of any portion thereof has been made to intervenor.

b. On March 31, 1976, demand was made upon the General Accounting Office of the United States with a copy of such demand to the Solicitor of the Department of the Interior, that all proceeds from federal oil and gas leases on the Kenai National Moose Range be distributed according to the provisions of 16 U.S.C. § 715s(c). A copy of said letter is attached as Exhibit "A" to this cross-claim. Kenai Peninsula Borough has received no indication that its request will be complied with.

c. Intervenor is informed and believes, and upon such information and belief alleges that in years prior to the fiscal year ending June 30, 1976, the proceeds from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, have been erroneously distributed under color of 30 U.S.C. § 191; more specifically, 37½% thereof to the State of Alaska for the construction and maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs. Except for the Affidavit of Tim Tafoya filed herein, intervenor has received no indication that the proceeds from such oil and gas leases for the fiscal year ending June 30, 1976, will not be distributed in any manner other than as in prior fiscal years.

9. Intervenor, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that Kenai Peninsula Borough is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant, the Secretary of the Interior, to pay to intervenor an amount equal to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

SECOND CLAIM FOR RELIEF

10. Incorporated herein by reference are paragraphs 1 through 5, inclusive, of this cross-claim.

11. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, Kenai Peninsula Borough is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases on lands situate within the Kenai National Moose Range.

12. Intervenor is informed and believes, and upon such information and belief alleges that said revenue has been erroneously distributed by defendant, Secretary of the Interior, in that:

a. Under color of 30 U.S.C. § 191, 37½% thereof was paid to the State of Alaska for the construction and

maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs;

b. 25% of the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses) for all fiscal years since July 1, 1965, and possibly earlier, should have been paid to Kenai Peninsula Borough by defendant, Secretary of the Interior, in accordance with 16 U.S.C. § 715s(c)(1). Kenai Peninsula Borough has received no revenue pursuant to said section.

13. Defendants, Kleppe, Simon and Staats, jointly and severally have a duty to recover for Kenai Peninsula Borough that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed since July 1, 1965, or before.

14. Intervenor is informed and believes, and based upon such information and belief alleges that said defendants will not perform their duty as set forth in paragraph 13. The reasons upon which this allegation is made include, but are not limited to, the following:

a. Intervenor is informed and believes, and upon such information and belief alleges that since March 16, 1976, or earlier, defendant, Secretary of the Interior, has been aware of the erroneous payments described in paragraphs 11 and 12. Nevertheless, defendant, Secretary of the Interior, has taken no action, known to Kenai Peninsula Borough, to rectify such error.

b. Intervenor is informed and believes, and upon such information and belief alleges that since July 9, 1976, and possibly earlier, defendants, Simon and Staats, have been aware of the erroneous payments described in paragraphs 11 and 12. Nevertheless said defendants have taken no action, known to the Kenai Peninsula Borough, to rectify such error.

15. Intervenor, Kenai Peninsula Borough, is entitled to orders of this court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that Kenai Peninsula Borough is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965, through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 2201, a judgment declaring that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, jointly and severally recover for Kenai Peninsula Borough that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed, and thereafter to pay said receipts to Kenai Peninsula Borough, all in accordance with 16 U.S.C. § 715s(c).

c. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, jointly and severally: (1) to recover from plaintiff that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses), heretofore erroneously distributed; and (2) after such recovery to pay the amount thereof due to Kenai Peninsula Borough in accordance with 16 U.S.C. § 715s (c).

THIRD CLAIM FOR RELIEF

16. Incorporated herein by reference are paragraphs 1 through 7, inclusive, 11, 12 and 13 of this cross-claim.

17. The amount of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965, and possibly earlier, is unknown to Kenai Peninsula Borough.

18. The manner in which the net receipts from federal oil and gas leases situate within the Kenai National

Moose Range, Alaska, has been distributed, is unknown to Kenai Peninsula Borough.

19. Kenai Peninsula Borough is entitled to an order of this court that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, and

WHEREFORE, intervenor prays that this court enter judgment granting relief as follows:

I. AS TO THE ANSWER TO THE COMPLAINT OF THE STATE OF ALASKA:

1. That the complaint be dismissed;
2. That intervenor be awarded costs of suit, including a reasonable attorney's fee;
3. For such other or further relief as may be proper.

II. AS TO THE COUNTERCLAIM AGAINST THE STATE OF ALASKA:

1. Judgment against the State of Alaska ordering the State to pay to the Kenai Peninsula Borough an amount equal to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, to the extent said sums have been paid to the State of Alaska in violation of the provision of 16 U.S.C. § 715s.
2. Judgment against the State of Alaska ordering the State to account for all monies received by it representing receipts derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska.
3. For costs of suit, including a reasonable attorney's fee, and for an accounting as set forth in the Cross-Claim.
4. For such other or further relief as the court may deem proper.

III. AS TO THE CROSS-CLAIM:

A. As to the First Claim for Relief:

1. A judgment declaring that plaintiff is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965 through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

2. That intervenor be awarded costs of suit, including a reasonable attorney's fee;

3. For such further relief as may be proper.

B. As to the Second Claim for Relief:

1. A judgment declaring that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, have a duty to recover for intervenor that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed.

2. A judgment in the nature of mandamus compelling defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General:

a. To recover for intervenor that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed;

b. After such recovery of the amount of receipts erroneously distributed, or any part thereof, to pay the amount thereof due intervenor in accordance with 16 U.S.C. § 715s(c).

3. That intervenor be awarded costs of suit including a reasonable attorney's fee.

4. For such further relief as may be proper.

C. As to the Third Claim for Relief:

1. A judgment that defendants, Secretary of the Interior, Secretary of the Treasury and Comptroller General render to intervenor an accounting:

a. Itemizing the amount of net revenue by fiscal year, derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska;

b. Itemizing the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant, Secretary of the Interior, to the State of Alaska, or any other entity;

(2) The date said payments were made by defendant, Secretary of the Interior, to the State of Alaska, or other entity.

2. That intervenor be awarded costs of suit including a reasonable attorney's fee.

3. For such further relief as may be proper.

D. As to the Fourth Claim for Relief:

1. An order enjoining defendants during the pendency of this action from distributing the net revenue from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, in any manner, or in the alternative, only in accordance with 16 U.S.C. § 715s (c) (1).

Dated at Anchorage, Alaska, this 8 day of November, 1976.

GALLAGHER, CRANSTON & SNOW
Attorneys for Plaintiff and
Intervening Defendant

By /s/ Charles K. Cranston
CHARLES K. CRANSTON
ANDREW R. SARISKY
Borough Attorney
Kenai Peninsula Borough

By /s/ Charles K. Cranston
CHARLES K. CRANSTON

Copy Received this 12 day of Nov., 1976.

/s/ [Illegible]
Attorney for U.S. Atty Off.

Copy Received this 12 day of Nov., 1976.

/s/ A.G.O.—SM
Attorney for ————————

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A76-94 CIV.

[Filed Feb. 4, 1977]

KENAI PENINSULA BOROUGH, PLAINTIFF

v.

THOMAS S. KLEPPE, DEFENDANT

No. J76-3 CIV.

STATE OF ALASKA, PLAINTIFF

v.

THOMAS S. KLEPPE, ET AL., DEFENDANTS
(Consolidated Proceedings)

ANSWER OF FEDERAL DEFENDANTS TO CROSS CLAIM BY KENAI PENINSULA BOROUGH

COME NOW the federal defendants, by and through their undersigned attorney, and by leave of opposing counsel, in response to the Cross Claim asserted herein against them by Intervenor Kenai Peninsula Borough, and, regarding the correspondingly-numbered paragraphs therein, admit, deny and aver:

Defendants have no certain knowledge or information regarding Intervenor's various representations of its information and belief; therefore, federal defendants are unable to admit or deny such general allegations. Federal defendants will, therefore, respond to intervenor's factual allegations, deeming the foregoing sufficient response to each and all of Intervenor's representations regarding its information and belief.

FIRST CLAIM OF RELIEF

1. Conclusions of law to which no response is required.
2. Defendants lack sufficient knowledge of information upon which to form a belief as to the truth of the allegation, and therefore, deny same.
3. Defendants admit the Secretary of the Interior is charged with administration of 16 U.S.C. § 715s(c), and that Elmer B. Staats is Comptroller General of the United States; defendants allege that Cecil D. Andrus is currently the Secretary of the Interior and that W. Michael Blumenthal is currently the Secretary of the Treasury. Defendants deny remaining allegations.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. As funds subject of this proceeding have been placed in escrow pending adjudication of the present controversy and will be paid in accordance with direction and order of the Court, defendants are unable to admit or deny such allegation.

a. Admit.

b. Admit.

c. Defendants admit the proceeds have been distributed in accordance with 30 U.S.C. § 191 to the State of Alaska for the respective purposes and in the respective proportions as alleged; defendants deny such distribution is erroneous; defendants have no certain knowledge or in-

formation as to indications Intervenor may have received regarding distribution of proceeds for the fiscal year ending June 30, 1976, and, therefore are unable to admit or deny such allegation.

9.(a) and (b). Conclusions of law to which no response is required.

10. Federal defendants incorporate by reference their answers herein to Paragraphs 1 through 5, inclusive, of the Cross Claim.

11. Admit.

12. To the extent the allegation is one of fact, defendants deny that said revenues have been erroneously distributed; to the extent such allegation is a conclusion of law, no response is required.

a. Admit.

b. Defendants admit Kenai Peninsula Borough has received no revenue pursuant to 16 U.S.C. § 715s(c)(1); remaining allegations are conclusions of law, to which no response is required.

13. To the extent of factual allegation, defendants deny; and, to the extent such allegations are conclusions of law, no response is required.

14. To the extent of factual allegation, defendants deny; and, to the extent such allegations are conclusions of law, no response is required.

a. Defendant Secretary of Interior admits awareness of the referenced payments but denies such were erroneous; defendant Secretary of Interior admits having taken no action to direct payments otherwise.

b. Defendants admit awareness of the referenced payments but deny such were erroneous; defendants admit having taken no action to direct payments otherwise.

15. Conclusions of law to which no response is required.

THIRD CLAIM FOR RELIEF

16. Defendants incorporate by reference their answers herein to Paragraphs 1 through 7, inclusive, and Paragraphs 11 through 13, inclusive, of the Cross Claim.

17. Federal defendants lack sufficient knowledge or information to form a belief as to the truth of such allegation, and, therefore, deny same.

18. Federal defendants lack sufficient knowledge or information to form a belief as to the truth of such allegation, and, therefore, deny same.

19. Conclusions of law to which no response is required.

Additionally, federal defendants:

A. Deny each and every allegation of the Cross Claim not specifically admitted, denied, or qualified herein, and

DEFENSE

B. Regarding the Second Claim for Relief, allege this Court lacks jurisdiction to compel federal defendants to recover receipts heretofore distributed to the State of Alaska.

WHEREFORE, having fully answered the Cross Claim of Kenai Peninsula Borough, federal defendants pray: that the relief requested of federal defendants herein be denied; and that the Cross Claim herein be dismissed; and that federal defendants be given all such other and further relief as the Court may deem just and proper.

Respectfully submitted this 4th day of February, 1977, at Anchorage, Alaska.

G. KENT EDWARDS
United States Attorney

By: /s/ [Illegible]
For JOHN D. ROBERTS
Assistant U. S. Attorney

AVRUM M. GROSS
Attorney General

FREDERICK H. BONESS
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Pouch K, State Capitol Bldg.
Juneau, Alaska 99811

Attorneys for the Plaintiff
State of Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Consolidated Civil Actions J76-3 and A76-94

[Filed Feb. 7, 1977]

KENAI PENINSULA BOROUGH, PLAINTIFF

vs.

THOMAS S. KLEPPE, DEFENDANT

ANSWERS OF THE STATE OF ALASKA TO KENAI PENINSULA BOROUGH'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, The State of Alaska, Plaintiff in one of these consolidated actions, hereby answers the interrogatories of the Kenai Peninsula Borough received by the State of Alaska on December 27, 1976.

INTERROGATORY NUMBER 1: Please identify each year during which revenues have been received by the State of Alaska, the source of which has been revenue derived by the United States from Federal Oil and Gas leases situate within The Kenai National Moose Range, Alaska.

ANSWER: The State of Alaska has received revenues from the United States under the Mineral Leasing Act of 1920 every year since 1959. The payments made to the State by the United States do not specify the leases for which payment was being made. However, since federal oil and gas leases located within the Kenai National Moose Range were producing oil in 1959 and every year thereafter, the State is certain revenues have been received every year from 1959 to 1975 from leases situate within the Moose Range. Revenues attributed to oil and gas leases in the Kenai Moose Range for the period July 1, 1975 to December 31, 1975, and for the year 1976 have been withheld by the Secretary of the Interior.

INTERROGATORY NUMBER 2: Please state by year the amount of revenue received by the State of Alaska the source of which has been revenue derived by the United States from Federal Oil and Gas leases situate within Kenai National Moose Range, Alaska.

ANSWER: The State's records show only the total revenues received by the State from the United States. These records do not enable the State to determine what portion of the total revenue is attributable to leases situate within the Kenai National Moose Range.

INTERROGATORY NUMBER 3: Please state the manner in which the revenue described in Interrogatory Number 2 was distributed, that is, (a) was any revenue paid to a particular fund or account of the State of Alaska or any agency or department thereof, and if so, to what fund, account or agency and in what amount; (b) was any revenue paid to a political subdivision in the State of Alaska and if so, to what political subdivision and in what amount; and (c) was any revenue paid to or distributed in any other manner not heretofore described and if so, how and to what was it distributed and in what amount.

ANSWER: (a) Payments by the United States are made to the Treasurer of the State of Alaska and are deposited directly into the State's General Fund.

(b) No.

(c) No.

INTERROGATORY NUMBER 4: What department, bureau, agency or other office of the State of Alaska made the decision as to how the distribution of revenue described in Interrogatory Number 3 was to be made?

ANSWER: Not applicable since the funds are deposited directly to the State's general fund.

INTERROGATORY NUMBER 5: What was the title of the official or officials making the decisions described in Interrogatory Number 4?

ANSWER: Not applicable.

INTERROGATORY NUMBER 6: What was the name of the person or persons who made the decision described in Interrogatories 4 and 5?

ANSWER: Not applicable.

INTERROGATORY NUMBER 7: Are any of the persons identified in Interrogatory Number 6 still living and if so (a) please state the present position, if any, held by such person and (b) the address of each person identified in Interrogatory Number 6.

ANSWER: Not Applicable.

INTERROGATORY NUMBER 8: Were the revenues described in Interrogatory Number 3 transmitted to the recipient thereof along with any written communication such as a memorandum, letter, telegram or similar communication?

ANSWER: As indicated in response to Interrogatory 2 above, State records do not identify payments according to particular leases, hence written communications do not relate specifically to leases located in the Kenai Moose Range. Only total revenue paid to the State are identified. Payments were received by the State twice yearly and each payment was accompanied by a letter stating what the payment was for.

INTERROGATORY NUMBER 9: If the answer to Interrogatory Number 8 is yes, please identify each written communcation as to date, sender and recipient and

if you will do so without a request for production, please attach a copy of each such communication to your answers to these interrogatories.

ANSWER: Copies of letters (and accompanying attachments) which were transmitted to the State with each payment are attached hereto.

DATED this 31 day of January, 1977, at Anchorage, Alaska.

/s/ George K. Hollet
GEORGE K. HOLLET
Deputy Director
Division of Land and Water Management

SUBSCRIBED AND SWORN TO before me this 31st day of January, 1977.

/s/ [Illegible]
Notary Public for Alaska

My Commission expires: Nov. 30, 1980

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

[Filed Mar. 1, 1977]

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior*, answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

INTERROGATORY NUMBER 1: Please identify each year during which revenues have been received by the United States, or any agency, department or bureau thereof from Federal Oil and Gas Leases situate within the Kenai National Moose Range, Alaska.

ANSWER: Revenues from Federal oil and gas leases situated within the Kenai National Moose Range, Alaska, were first received by the Bureau of Land Management (BLM) and/or the U.S. Geological Survey (USGS) and deposited to BLM accounts in fiscal year 1954, and all years subsequent through the current fiscal year.

INTERROGATORY NUMBER 2: Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

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* The present Secretary of the Interior is Cecil D. Andrus.

ANSWER: Oil and gas revenues collected by BLM and USGS within the Kenai National Moose Range, Alaska, are being identified for fiscal year 1966, and subsequent years. This information has been deposited with the Federal Records Center and efforts to retrieve it are underway. Upon receipt of this information, a supplementary answer will be filed. Revenues prior to fiscal year 1966 predate the period in question (effective date of the amendment to 16 U.S.C. § 715s) and are not readily available.

INTERROGATORY NUMBER 3: Please state the manner in which the revenues described in Interrogatory Number 2 was distributed. That is, (a) was any revenue paid to a particular fund of the United States or any agency or department, thereof, and if so, to what agency and what amount; (b) was any revenue paid to the State of Alaska or any of its political subdivisions, and in what amount; and (c) was any revenue paid or distributed in any other manner not heretofore described, and if so, to what agency or entity and in what amount.

ANSWER: The revenues described in Interrogatory Number 2 for the period July 1, 1965, through December 18, 1971, were distributed 90 percent to the State of Alaska, and 10 percent to the General Fund of the U.S. Treasury. After the date of the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, dated December 18, 1971), the computation of the State (90 percent) and Federal (10 percent) shares was made on net revenues after the deduction of the amount paid into the Alaska Native Fund. Section 9(d) of the ANCSA states, "All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, *except that prior to calculating the shares of the State and the United States* as set forth in such Act, (1) a royalty of 2 percentum upon the

gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 percentum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. *The respective shares of the State and the United States shall be calculated on the remaining balance.*" (Underscoring supplied.)

The oil and gas revenues described in Interrogatory No. 2 were included in the semiannual payments under Section 35 of the Mineral Leasing Act of 1920. The total revenues under that Act for the period 1966 through 1976, and payment thereof, is set forth below.

Fiscal Year	Oil & Gas Revenues	Federal Share (10%)	State Share 90%	Alaska Native Fund
1966	$8,605,227.34	$860,552.74	$7,744,704.60	$
1967	8,485,438.41	848,543.84	7,636,894.57	
1968	8,762,855.50	876,285.55	7,886,569.95	
1969	9,028,783.83	902,878.38	8,125,905.45	
1970	9,207,849.58	920,784.96	8,287,064.62	
1971	8,910,283.41	891,028.34	8,019,255.07	
1972	8,144,513.62	766,169.39	6,895,524.46	482,819.77
1973	7,130,855.72	628,748.33	5,658,735.00	843,372.39
1974	9,870,036.12	857,056.46	7,713,508.13	1,299,471.53
1975	9,557,603.26	816,958.31	7,352,624.74	1,388,020.21
1976	2,323,022.96	204,524.33	1,840,718.89	277,779.74
1976 TQ	211,901.52	18,118.08	163,062.69	30,720.75

When the controversy arose in 1975 over the deposit and distribution of oil and gas revenues collected on wildlife refuge lands, revenues collected in the Kenai National Moose Range were deposited to a suspense account pending determination of the proper disposition of such revenue. Currently we are holding $5,688,710.00 for fiscal year 1976, and $900,980.85 for the fiscal year 1976 Transition Quarter, in the suspense account.

INTERROGATORY NUMBER 4: What department, bureau, agency or other office of the United States made the decision as to how the distribution of revenue described in Interrogatory Number 3 was to be made?

ANSWER: Disposition of the revenues described in Interrogatory No. 3 was made by the Bureau of Land Management in accordance with the direction in Section 6 of Public Land Order 3400, to the effect that these lands are subject to the mineral leasing laws.

INTERROGATORY NUMBER 5: What was the title of the official or officials making the decisions described in Interrogatory Number 4?

ANSWER: The official making the decision described in Interrogatory No. 4 was the Secretary of the Interior.

INTERROGATORY NUMBER 6: What was the name of the person or persons who made the decision described in Interrogatories 4 and 5?

ANSWER: The name of the Secretary of the Interior at that time was Stewart L. Udall.

INTERROGATORY NUMBER 7: Are any of the persons identified in Interrogatory Number 6 still living and if so (a) please state the present position, if any, held by such person and (b) the address of each person identified in Interrogatory Number 6.

ANSWER: Mr. Udall is still living. He is of counsel to Duncan, Brown, Weinberg and Palmer, 1700 Pennsylvania Ave., N.W., Washington, D.C. 20006.

INTERROGATORY NUMBER 8: Were the revenues described in Interrogatory Number 3 transmitted to the recipient thereof along with any written communication such as a memorandum, letter, telegram or similar communication?

ANSWER: Yes. The revenues described in Interrogatory No. 3 were transmitted to the Treasurer of the State of Alaska on a copy of Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, with supporting schedules. Transfers to the Alaska Native Fund were made on Standard Form 1081, Voucher and Schedule of Withdrawals and Credits. Transfers of the Federal share were made on Standard Form 224,

Statement of Transactions. Treasury has the original copies of these documents.

INTERROGATORY NUMBER 9: If the answer to Interrogatory Number 8 is yes, please identify each written communication as to date, sender and recipient and if you will do so without a request for production, please attach a copy of such communication to your answers to these interrogatories.

ANSWER: The following mineral leasing payments were made by the Chief, Division of Finance, Bureau of Land Management, to the Treasurer of the State of Alaska:

Fiscal Year	Period Covered	Date of Payment	Amount of Payment	Total
1966	7/1-12/31/65	2/14/66	$3,352,374.23	
	11/1-12/31/65	6/17/66	556,056.69	
	1/1- 6/30/66	8/24/66	3,836,273.68	$7,744,704.60
1967	7/1-12/31/66	2/15/67	3,865,506.16	
	1/1- 6/30/67	8/29/67	3,771,388.41	7,636,894.57
1968	7/1-12/31/67	2/ 1/68	3,739,108.90	
	1/1- 6/30/68	8/ 9/68	4,147,461.05	7,886,569.95
1969	7/1-12/31/68	2/ 3/69	3,631,323.32	
	1/1- 6/30/69	8/11/69	4,494,582.13	8,125,905.45
1970	7/1-12/31/69	2/ 6/70	3,744,987.22	
	1/1- 6/30/70	8/12/70	4,542,077.40	8,287,064.62
1971	7/1-12/31/70	2/ 4/71	4,106,641.05	8,019,255.07
	1/1- 6/30/71	8/18/71	3,912,614.02	
1972	7/1-12/31/71	2/ 1/72	3,903,628.56	
	1/1- 6/30/72	8/ 9/72	2,991,895.90	6,895,524.46
1973	7/1-12/31/72	1/26/73	2,952,558.99	
	1/1- 6/30/73	8/ 8/73	2,706,176.01	5,658,735.00
1974	7/1-12/31/73	1/22/74	3,297,876.93	
	1/1- 6/30/74	8/ 9/74	4,415,631.20	7,713,508.13
1975	7/1-12/31/74	1/21/75	3,886,920.25	
	1/1- 6/30/75	8/11/75	3,465,704.49	7,352,624.74
1976	7/1-12/31/75	2/13/76	833,750.05	
	1/1- 6/30/76	9/ 1/76	1,006,968.84	1,840,718.89
1976 TQ	7/1- 9/30/76	12/20/76	163,062.69	163,062.69

Copies of documentation are enclosed.

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia, this 3rd day of February 1977.

/s/ [Illegible]
Notary Public

My commission expires: April 14, 1977

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

SUPPLEMENTARY ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior further answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

INTERROGATORY NUMBER 2: Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

ANSWER:

1966	$ 3,810,410.21
1967	4,256,583.96
1968	5,383,799.62
1969	5,332,969.05
1970	5,211,852.61
1971	4,874,585.54
1972	4,438,285.70
1973	4,078,699.99
1974	7,378,051.93
1975	6,771,147.28
1976	5,703,200.14
Total	$57,239,586.03

The casefiles on nine leases remain unretrieved from the Federal Records Center. When located, this interrogatory will be further supplemented.

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia this 15th day of April, 1977.

/s/ [Illegible]

My commission expires: 8/14/78

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

vs.

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior further answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

INTERROGATORY NUMBER 2: Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

ANSWER:

1966	$ 3,813,290.21
1967	4,257,873.96
1968	5,385,099.62
1969	5,334,042.39
1970	5,214,962.71
1971	4,876,499.12
1972	4,438,305.70
1973	4,078,699.99
1974	7,378,051.93
1975	6,771,147.28
1976	5,703,200.14
Total	$57,251,173.05

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia this 25th day of April, 1977.

/s/ [Illegible]
Notary Public

My commission expires: April 14, 1982

UNITED STATES
DEPARTMENT OF THE INTERIOR

Office of the Solicitor
Washington 25

M. 34516. August 5, 1946

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

The Director of the Fish and Wildlife Service has asked to be advised whether there is legal authority for the Secretary of the Interior, through the Director of the Fish and Wildlife Service, to enter into leases for the drilling for oil on *acquired* lands constituting wildlife refuges.

It is my opinion that there is legal authority to do so.

The authority for the Secretary of the Interior, or the Director of the Fish and Wildlife Service, as his agent, to grant mineral leases, is derived from section 401 of the act of June 15, 1935 (49 Stat. 383), which amended the Migratory Bird Conservation Act, approved February 18, 1929 (45 Stat. 1222, 16 U.S.C. sec. 715), and which provides as follows: [1]

> "That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, *and from other privileges or refuges* established under the Migratory Bird Conservation Act of Feb-

[1] The Mineral Lands Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. sec. 22), as amended, is not applicable, since acquired, not public domain, lands are involved. 40 Op. Atty. Gen. No. 1, January 3, 1941; see also *Chiles P. Plummer*, departmental decision, February 24, 1945 (A. 23988).

ruary 18, 1929, or under any other law, proclamation, or Executive Order, administered by the Bureau of Biological Survey of the United States Department of Agriculture,[2] shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated: *Provided,* That when any such refuge is in more than one State or Territory or county or subdivision, the distributive share to each from the proceeds of such refuge shall be proportional to its area therein: *Provided further,* That the disposition or sale of surplus animals, and products, *and the grant of privileges on said wildlife refuges may be made upon such terms and conditions as the Secretary of Agriculture shall determine to be for the best interests of government* or for the advancement of knowledge and the dissemination of information regarding the conservation of wildlife, including sale in the open market, exchange for animals of the same or other kinds, and gifts or loans to public or private institutions for exhibition or propagation: *And provided further,* That out of any moneys received from the grant, sale, or disposition of such animals, products, or privileges, or as a bonus upon the exchange of such animals the Secretary of Agriculture is authorized to pay any necessary expense incurred in connection with and for the purpose of effecting the removal, grant, disposition, sale, or exchange of such animals, products, or privileges; and in all cases such expenditures shall be deducted from the gross receipts of the refuge before

[2] Section 4(f)(h) of Reorganization Plan No. II, effective July 1, 1939 (53 Stat. 1433, 1434; 4 F.R. 2731), transferred the functions of the Secretary of Agriculture relating to the conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

the Secretary of the Treasury shall distribute the 25 per centum thereof to the States as hereinabove provided." (Emphasis supplied.)

The enumeration without qualification of the various categories of resources from the sales of which "25 per centum of all money received during each fiscal year" is to be derived and paid in part to the various States, I believe was intended, in the circumstances, to encompass such privileges as easements or rights-of-way for minerals or other exploratory work on acquired migratory bird refuge lands, provided, of course, that there would result no derogation from the primary purpose for which such refuges are established. The authority of the Director, Fish and Wildlife Service, to grant applications for the drilling for oil and gas on *public domain* lands is acknowledged. Disallowance of past applications for such privileges has been based upon the ground of the lack of authority, but upon a finding that operations following the discovery of oil and gas would virtually destroy the usefulness of the particular refuge as a sanctuary for bird life. See *Arthur P. Wilcox*, Departmental Decision, June 13, 1945 (A. 24042); *Imogene C. Brooks*, Departmental Decision, April 9, 1945 (A. 23986). There accordingly is nothing novel or anomalous presented by a proposal to drill for oil in a wildlife refuge. Therefore, in the absence of a specific direction against such activity on *acquired* lands as distinguished from public domain lands, no basis appears for concluding that such a prohibition exists.

That there was vested in the Secretary of Agriculture authority now transferred to the Secretary of the Interior, to permit, in his discretion, within defined limits, the continuance after acquisition of operations involving mineral resources on acquired lands, where such operations were in existence at the time of their acquisition, is clear.[3]

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[3] Section 5 of the act of February 18, 1929, *supra*, provided for the acquisition of areas by purchase, rental, gift or devise for use

Since lands of all three derivations are included in refuges, it is difficult to rationalize a conclusion that would permit drilling for oil on the public domain portion, and the continued drilling for oil where such operations existed at the time of acquisition, but prohibit drilling on the acquired portion which had not been drilled prior to its acquisition.

There is nothing in the very meager legislative history of the Migratory Bird Conservation Act, as amended, *supra*, requiring such a construction. The language reflects that the drafsmen, of the 1935 amendatory act in particular, followed closely, although with considerable condensation, the pattern of legislation previously enacted with respect to the national forest reservations, where drilling for oil on both public domain and acquired lands is authorized. While the only formal comment on section 401, *supra*, is concerned with the disposition to be made of revenues derived from the refuges more so than with the precise methods of such derivation, it nevertheless reflects what appears to have been a general understanding that migratory bird refuges were intended to be regarded as anologous in their administrative aspects to the national forest reservations.[4]

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as sanctuaries. Section 6 provided for the securing of safe title thereto in the United States and that the acquisition of such areas by the United States "*shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of Agriculture in no manner interfere with the use of the areas* so encumbered *for the purposes of this Act*; . . . subject to rules and regulations prescribed from time to time by the Secretary of Agriculture . . ." (Emphasis supplied). See also sections 302 and 304 of the amendatory 1935 act, *supra*.

[4] In H. Rept. No. 876, of March 16, 1934 (74 Cong., 1st Sess.), which accompanied H.R. 7982, enacted into the amendatory law of June 15, 1935 (49 Stat. 382), the following explanation occurs under Title IV, governing "Participation of States in Revenue from Certain Wildlife Refuges:" "The purpose of this Title is to authorize payment to the States of 25 percent of any revenue that

In view of the foregoing, it is my opinion that the Secretary of the Interior may enter into leases for the drilling for oil on acquired lands included within wildlife refuges.

Respectfully,

(Sgd) Felix S. Cohen,
Acting Solicitor.

Approved: August 5, 1946.

(Sgd) Oscar L. Chapman,
Acting Secretary of the Interior.

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may be derived from certain wildlife refuges and reservations administered by the Department of Agriculture. *It is the application* to these refuges *of the plan that has obtained under Congressional legislation for many years with respect to participation of the various States in revenues from the national forests, and is* thought to be equitable and fair to the states". (Emphasis supplied). See also S. Rept. No. 822, of May 13, 1935 (74th Cong., 1st Sess.) to the same effect.

CENTRAL FILES COPY

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D.C.

to Secretary

Jul. 30, 1951
for signature

R-2
Oil and Gas

Aug. 14, 1951

to Secretary

Aug. 9, 1951
for signature

My dear Mr. Warren:

Your opinion is requested on the proper disposition of receipts from oil and gas leases granted by the Department in accordance with the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1946 (61 Stat. 913) and Section 401, Title IV of the Act of June 15, 1935 (49 Stat. 383). In addition and for the reasons set out herein, a reconsideration of your opinion of March 18, 1942 (21 Comp. Gen. 873) also is requested.

During the fiscal year 1951, approximately $300,000, representing rents and royalties due the United States under the terms of oil and gas leases covering certain lands within the Delta National Wildlife Refuge, were deposited to the receipt account "46019 receipts under Migratory Bird Conservation Act" for later disposition in accordance with Section 401 of the Act of June 15, 1935 *supra*. Those provisions of the Mineral Leasing Act for Acquired Lands and of Section 401 of the Act of

1935 regarding the disposition of receipts are such that no question concerning the disposition of these receipts would be raised now were it not for the possible application of the problem of certain language occurring in two prior decisions of your office, both of which concern the construction of Section 401 of the Act of 1935. Because of this situation, disposition of these receipts will be deferred pending a clarifying decision from your office.

The Mineral Leasing Act for Acquired Lands provides that all deposits of coal, phosphate, oil, oil shale, gas, sodium potasium and sulphur which are owned or which may hereafter be acquired by the United States and which are within the lands acquired by the United States, exclusive of certain lands not of interest in determining the present question, "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." The lands within the Delta National Wildlife Refuge now covered by the leases referred to are acquired lands within the meaning of the definitions appearing in the Mineral Leasing Act for Acquired Lands. Section 6 of that Act provides in part as follows: "All receipts derived from leases issued under the authority of this act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this act shall not affect the distribution of receipts pursuant to legislation applicable to such lands." Section 401 of the Act of June 15, 1935, provides that "Twenty-five percent of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, * * * shall be paid at the end of such year by the Secretary of the Treasury

to the county or counties in which such refuge is situated * * *." By the provisions of the General Appropriation Act of 1951 (P.L. 759, 81st Cong.) the balance of such receipts have been made available for expenditure in the management of national wildlife refuges, and for certain other purposes. Thus, the net result of the provisions referred to would appear to make the receipts due the United States under the terms of the oil and gas leases available for disposition in accordance with Section 401 of the Act of 1935 as amended by the General Appropriation Act of 1951. This view is further supported by the Report of the House Committee on Public Lands on H.R. 3022, 80th Congress (the Mineral Leasing Act for Acquired Lands), which contains the following statement: "Under the proposed act, receipts would be disposed of in the same manner as other receipts *on account of nonmineral uses of same land*, and protection is also afforded for safeguarding outstanding rights." (Emphasis supplied.)

In the decision of your office dated March 18, 1942 (21 Comp. Gen. 873), there was for consideration the question of the disposition of the receipts by the United States of a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands wherein the oil was found. The question here is the disposition of receipts arising out of a grant by the United States of a privilege and therefore is not necessarily similar. However, the language of at least a portion of the decision is such as to indicate a view that royalties from oil and gas leases granted by the United States also are not receipts of the class indicated to be disposed of in accordance with the provisions of Section 401, but rather, are receipts to be credited to miscellaneous receipts of the Treasury.

After citing in full Section 401 of the Act of June 15, 1935, certain provisions of Section 301 of the same Act,

several sections of the regulations governing the administration of wildlife refuges, and portions of the legislative history of Section 401, the decision enters into a somewhat interesting discussion of the definition of the words "spontaneous products" and "soil" as they appear in Section 401, and of the application of the doctrine of *ejusdem generis* to the general phrase following the enumeration "timber, hay, grass." With respect to the definitions, the decision concludes (1) that the word "spontaneous" should be given its natural meaning, (2) that "products" means things produced, (3) that "soil" refers to the face or surface of the ground, and finally, that "oil" is a mineral and therefore is not a "spontaneous product of the scil." It also concludes that under the doctrine *ejusdem generis* the general phrase "other spontaneous products of the soil" following the enumeration "timber, hay, grass" can include only products of like kind or character which would eliminate oil. From this discussion, together with a reference to the fact that the oil in question was not the property of the government but had been reserved to the grantor in the deed to the United States, the decision holds, without further explanation or reasoning, that the receipts should not be deposited to the credit of the account "146019 Receipts under Migratory Bird Conservation Act."

With respect to the decision of 1942 as well as to the operation now presented, it is interesting and pertinent to note that the excerpts from the legislative history included in that decision refer to "any revenue" that may be derived from wildlife refuges and reservations, and point out that the legislation, i.e., Section 401, is intended to apply to these refuges the same plan that was obtained under Congressional legislation for the participation by the states in revenues from national forests. It will be recalled that the States participation in virtually all revenues arising from the administration of the national forest. Thus, the intention of the legislators is

quite clear and does not support the conclusions of the decision of 1942 on this point.

It is quite true that the doctrine of *ejusdem generis* is a useful tool or statutory interpretation and should be given primary consideration in attempting to determine the exact meaning of a particular statute, but it is neither final nor conclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canon of statutory construction, of which the rule of *ejusdem generis* is only one. If upon reconsideration of the context and the objects sought to be distributed and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail." Helvering v. Stockholm & Bank, 293 U.S. 84, 88-89. In the decision of 1942, the doctrine was applied, perhaps properly, to the general phrases "all other spontaneous products of the soil," as that phrase follows the enumeration of "timber, hay, grass." However, that enumeration and its following general phrase is but one part of a larger enumeration also followed by a general phrase so that the result of the first application cannot be used, within the limits of any of the rules of statutory construction, to determine the scope of either the larger enumeration or of the general phrase following such larger enumeration.

Section 401 enumerates three more or less specific classes of things and one general class of things, the revenue from the sale or disposition of which is to be shared with the States. The first is wildlife; the second is timber, hay, grass, or other spontaneous products; the third is shell, sand, or gravel; and, the fourth is "other privileges." According to Sutherland, Statutory Construction, Third Edition, Section 4910, the doctrine of *ejusdem generis* applies when the following five conditions exist: (1) the statute contains an enumeration by specific

words; (2) the members of the enumeration constitute a class; (3) the class is not exhausted by the enumeration; (4) a general term follows the enumeration; and, (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires. Conversely, Sutherland states, Section 4912, "If no enumeration is attempted, if terms preceding the general term are themselves general, or if the members of the enumeration, although specific, are essentially diverse in character, the inference that the legislature attached to the general term a restricted meaning, *ejusdem generis* with preceding specific terms, does not arise." That there is an enumeration of a sort cannot be denied. The members of this enumeration do not constitute a class, however, since the several classes of things do not possess any characteristic features common to all. This is an animal, which term is generic in itself; the second is "spontaneous products of the soil" which, again, may be generic; and the third is mineral. Again, there is clearly manifested in the remainder of the statute an intent that the general term be given a broader meaning than the doctrine requires. This follows both from the fact that there would be a violation of a superior rule of statutory construction if no effect is to be given to the general term "and from other privileges on refuges", and from the fact that the statute itself in several places discloses an intent to give the term "privileges" a characterization separate and apart from that associated with the other terms.

Although Congress must have intended that the term "other privileges" include the acquisition or use of things not specifically enumerated, application of the doctrine in the manner set out in the 1942 decision precludes giving those words an effect whatsoever. In contrast the statute in at least three places makes reference in particular to "animals," "products" and "privileges." Such references recognize differentiation or diversity in character of the members of the original enumeration and

also indicates rather clearly the legislative intent to permit the State to share in revenue from "privileges" as distinguished from animals and products. Again if not so construed the use of the term "privilege" is superfluous since acquisition or use of animals or products is, strictly speaking, a privilege.

One other point perhaps should be mentioned both in connection with disposition of receipts from oil and gas leases issued by the United States and covering refuge lands in connection with the decision of 1942. Oil and gas leases generally are either or both the grant of a right to prospect for and take oil *and* the sale of oil produced. As such an oil and gas lease may be either or both a grant of a privilege and a sale of a mineral. However, the exclusive right which the landowner has to explore beneath his surface and reduce any oil or gas thereunder to possession may be granted or accepted and then so severed is in the nature of a profit a prendre. See Tiffany on Real Property, Third Edition, Section 589. A profit a prendre involves primarily a power to acquire by severance or removal from another's land something or things previously constituting a part of the land. As instances of profits a prendre may be mentioned rights to take from another's land and so acquire as one's own, wood, herbidge or coal or other minerals. Tiffany, Real Property, Third Edition, Section 839. With these definitions in mind it is rather clear that receipts in the nature of rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge land of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be credited to refuge receipts.

In view of the above it is the opinion of this department that rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge lands, of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be

disposed of in accordance with the provisions of that Section.

Mention also has been made of another decision of your office, the language of which might possibly be construed as affecting the initial position presented in this letter. That reference is to the decision of July 1, 1949 (29 Comp. Gen. 1), which held that receipts accruing from the operation of the so-called Industrial Unit of the Crab Orchard National Wildlife Refuge were to be credited to miscellaneous receipts and were not for disposition in accordance with the provisions of Section 401. Again, in this decision an attempt was made to apply the doctrine of *ejusdem generis* to the phrase "other privileges" in a manner that is wholly unsupported by the decisions of the court. As pointed out previously the doctrine cannot apply to an enumeration of things having diverse characteristics. The decision also mentioned the provisions of Section 321 of the Act of June 30, 1932 and concluded that this section constituted a "specific requirement" which was not overcome by the provisions of Section 401. It seems that such a conclusion is questionable because the phrase "except as otherwise specifically provided by law" characterizes Section 321 as general legislation the provisions of which are not in conflict with legislation dealing with a specific subject matter, such as Section 401. The decisions on this point are so numerous it seems hardly necessary to refer to any particular one. Because of this and, in any event, because that part of the conclusion was coupled with the thought that "privileges" did not include the rental of buildings, it is requested that this decision also be reconsidered at this time.

Your early consideration of the problem presented will be appreciated.

Sincerely yours,

/s/ Vernon D. Northrop
Administrative Assistant Secretary

Hon. Lindsay C. Warren
Comptroller General
of the United States
Washington 25, D.C.

COMPTROLLER GENERAL OF
THE UNITED STATES
Washington 25

Oct. 10, 1951

[Illegible]

The Secretary of the Interior

Dear Mr. Secretary:

Reference is made to letter of August 14, 1951, from your Administrative Assistant Secretary, requesting an opinion concerning the disposition of receipts from oil and gas leases granted by the Department of the Interior in accordance with the provisions of the Mineral Leasing Act for Acquired Lands, approved August 7, 1947, 61 Stat. 913, on lands within the Delta National Wildlife Refuge.

It is stated that the leases involve acquired lands within the meaning of the act cited above, which act is designed, generally, to promote and encourage the development of the ore, gas, and other minerals on the acquired lands of the United States on a uniform basis under the jurisdiction of the Department of the Interior. Section 6 of said act 61 Stat. 915 provides in part as follows:

> "SEC. 6. All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in

a special fund in the Treasury until final disposition thereof by the Congress."

Section 401 of the act of June 15, 1935, 49 Stat. 383, applicable to such lands, provides that:

> "SECTION 401. That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, administered by the Bureau of Biological Survey of the United States Department of Agriculture, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated * * *."

It is stated that it is the view of your Department that the receipts here in question should be disposed of in accordance with section 401, *supra*, but that some doubt in the matter arises because of a previous ruling by this Office with respect to the disposition of somewhat similar receipts, which is published in 21 Comp. Gen. 873 wherein it was held quoting from the syllabus) that:

> "Any moneys received by the United States pursuant to a deed, under which the government acquired land for a wildlife refuge, providing for the payment of a royalty to the United States for all oil, gas, sulphur, or other minerals recovered and saved from the land by the grantor are not receipts 'from the sale or other disposition of * * * spontaneous products of the soil's on wildlife refuges 25 percent of which is required by section 401 of the act of June 13, 1935, to be distributed to the county

or counties in which the refuge is located, but are receipts inuring to the benefit of the United States and are for handling accordingly."

Such decision concerned the question of the disposition of receipts received by the United States as a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands wherein the oil was found. The question now presented concerns the disposition of receipts derived from leases granted by the United States on acquired lands the grant of which contains no such reservation.

While the language contained in such earlier decision may be construed as requiring the receipts considered herein to be covered in the Treasury of Miscellaneous receipts it now appears that, in view of section 6 of the Mineral Leasing Act for Acquired Lands, *supra*, the Congress intended the counties in which such acquired lands are located to share in the distribution of receipts from oil and gas leases such as here involved. Our view as stated in your letter, is supported by a statement contained in Report No. 550, House Committee on Public Lands, which accompanied H.R. 3022, 80th Congress, which bill subsequently was enacted as the mineral leasing Act for Acquired Lands, reading that "Under the proposed law receipts would be disposed of in the some manner as other receipts "on account of nonmineral uses of the same land, and protection is also provided for safeguarding outstanding rights."

Accordingly, it appears that receipts from oil and gas leases granted in accordance with the Mineral Leasing Act for Acquired Lands properly calls for disposition in accordance with section 401 of the act of June 15, 1935.

In view of such holding, it is not necessary in disposing of the instant action to now reconsider the opinion appearing in 21 Comp. Gen. 873 as requested by you. In this connection it is noted that the Interior Department

Appropriation Act, 1951, 64 Stat. 693, contains a provision authorizing amounts equal to 75 per centum of the net proceeds received during the next fiscal year and each fiscal year thereafter under the provisions of section 401 of the act of June 15, 1935, to be used for management of national wildlife refuges and to remain available until expended. Since the decision has been in effect for approximately ten years without any reason having been raised either by the counties in which the refuges are located or by your Department until the present time, it may be that reconsideration of such decision is now requested by you with the view that such receipts may be made available for management purposes. However, your letter contains no new facts or arguments which were not fully considered by this Office at the time such decision was rendered. Thus, we find no basis now for a conclusion different from that reached therein

You request also that the decision appearing in 29 Comp. Gen. 1, holding that rentals from public buildings located on wildlife refuges for depositing to the Treasury as miscellaneous receipts rather than for disposition under section 401 of the act of June 15, 1935, be reconsidered. In this connection you contend that the doctrine of ejusdem generis may not properly be applied to the items enumerated in section 401 and that it is questionable that the term "other privileges" did not include the rental of buildings. The decision that receipts from rental of public buildings located on wildlife refuges must be deposited in miscellaneous receipts was based primarily on the provisions of section 22 of the act of June 30, 1932, 47 Stat. 412, which specifically requires "that all moneys derived from the rental of public buildings shall be collected and covered into the Treasury as miscellaneous receipts. In this connection it is a well established rule of statutory construction that an exception to a general requirement in a statute is to be construed literally. In other words any doubt is to be resolved in favor of the general provision and against the exception.

Since, as stated in such decision, nothing is found in the legislative history of section 401 that indicates that rentals of public buildings were intended to be included in the term "other privileges" and since the receipts specifically generated in section 401 are in no way similar or related to the receipts here in question the doubt in the matter must be resolved in favor of the general requirement that rentals from public buildings be deposited and entered into the Treasury of the United States as miscellaneous receipts. Accordingly, the decision appearing in 29 Comp. Gen. 1 is affirmed.

Sincerely yours,

/s/ Lindsay C. Warren
Comptroller General
of the United States

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT
DATE: July 6, 1951

TO : Chief, Division of Administration

FROM : Chief Counsel

SUBJECT: Delta Refuge Oil Royalties

Your memorandum of June 22 indicates that I have become involved in a "controversy" of which I was not aware. As a matter of fact, it still is not clear whether any actual controversy exists since to the best of my knowledge neither of our offices has set down any firm view on the question of statutory construction that apparently is involved.

From another memorandum that has reached my desk, I gather that the immediate question is what disposition should be made of the receipts from oil and gas leases granted by the Department on certain lands within the Delta National Wildlife Refuge. The receipts now in question are rents and royalties due the United States under the terms of leases issued in accordance with the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1946 (61 Stat. 913). Fortunately, both the question and the answer are relatively simple. At the same time, it probably must be recognized that someone will confuse this question with that presented to the Comptroller in 1942, which concerned the disposition of receipts by the United States of a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands whereon the oil was found. In those circumstances, it may be just as well to analyze the Comptroller's reply (21 Comp. Gen.

381) and utilize it to support the conclusions of this memorandum.

Section 401, Title IV of the Act of June 15, 1935, (49 Stat 383) provides that 25 percentum of money received from the sale or other disposition of "surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges" shall be paid to the counties in which such refuges are located. Prior to the General Appropriation Act of 1951 (P. L. 759, 81st Cong.), the balance of such receipts were covered into the Treasury. Since that date, however, the balance has been made available for the management of national wildlife refuges and certain other purposes. An oil or gas lease may be either or both the grant of a right to prospect for and take oil and the sale of oil produced. As such, it is either or both a grant of a privilege and a sale of a mineral. However, the exclusive right which the landowner has to explore beneath his surface and reduce any oil or gas thereunder to possession may be granted or accepted, and when so severed, is in the nature of a profit à prendre. See Tiffany on Real Property, Third Edition, Section 589. A profit à prendre involves primarily a power to acquire by severance or removal from another's land some thing or things previously constituting a part of the land. As instance of profits à prendre may be mentioned rights to take from another's land and so acquire as one's own, wood, herbage, or coal or other minerals. Tiffany, Real Property, Third Edition, Section 839. With these definitions in mind, it is rather clear that receipts in the nature of rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge lands of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be credited to refuge receipts.

While oil and gas leases probably could be made under the authority of Section 401, is is unnecessary to consider

that problem in detail since the Mineral Leasing Act for Acquired Lands now specifically authorizes the granting of such leases and also directs that receipts derived from such leases "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands." On the question of the distribution receipts, the legislative history of the Mineral Leasing Act for Acquired Lands is particularly helpful since the Report of the House Committee on Public Lands on H. R. 3022, 80th Congress, first session, stated, "Under the proposed Act receipts would be disposed of in the same manner as other receipts on account of non-mineral uses of the same land, and protection is also afforded for safeguarding outstanding rights."

As indicated above, it is not unlikely that the present question will be confused with that presented by the Department to the Comptroller General in 1942, of whether certain payments, received under the provisions of deeds by which the United States acquired title to lands now a part of the Aransas National Wildlife Refuge, should be deposited to "refuge" receipts and distributed in accordance with Section 401, or should be credited to miscellaneous receipts. In his reply, (21 Comp. Gen. 873), the Comptroller determined that the receipts in question were not those of the nature covered by the provisions of Section 401, and, therefore, that they should be deposited in miscellaneous receipts. The decision is unnecessarily long since he very easily could have arrived at his net conclusion by relying on the fact, which was more or less incidentally mentioned in his opinion, that the particular receipts in question were not receipts from sales made by the Government, but were simply a share of proceeds arising out of sales made by third persons of property owned by such persons. The obligations of the third persons to pay the Government a share of the proceeds from the sale of oil arose out of contractual obligation having

no direct or indirect relationship to a disposition by the Government of either surplus or other property.

After citing in full Section 401 of the Act of June 15, 1935; certain portions of section 301 of the same Act; several sections of regulations governing the administration of wildlife refuges; and, portions of the legislative history of Section 401, the Comptroller enters into a somewhat interesting discussion of the meaning of the words "spontaneous," "products," and "soil" as used in the first few phrases of Section 401. He also discusses the application of the doctrine of ejusdem generis to the enumeration of timber, hay, and grass. With respect to the definitions, he concludes (1) that the word "spontaneous" should be given its usual meaning, (2) that "products" means things produced, (3) that "soil" refers to the face or surface of the ground, that "oil" is a mineral and therefore is not a "spontaneous product of the soil." He then points out that under the doctrine of *ejusdem generis*, the term "other spontaneous products of the soil" can include only products of like kind or character which, in this instance, are limited to products like timber, hay, or grass, and, therefore, could not include oil. He emphasizes the application of the doctrine as well as some of its limitations by pointing out that because of the doctrine it was necessary for Congress to add the words "shell, sand, or gravel" in order to authorize the receipts from the sale of these products to be credited to refuge receipts. The net result of the decision is, first, that oil is a mineral and not a spontaneous product of the soil, and, next, that there may be at least two classes of receipts in connection with refuge administration, one of which is to be credited to miscellaneous receipts and the other of which may be credited to refuge receipts.

In passing, it may be noted that there was no discussion of the scope of the term "surplus wildlife" or of the disposition of the receipts from the sale of surplus wildlife. There also was no discussion of the scope of the

enumeration of "shell, sand, or gravel." All three of these, of course, are normally classified as minerals. Again, there was no discussion of the phrase "and from other privileges of refuges", which follows the enumeration of at least three entirely separate classes. Under the doctrine of *ejusdem generis*, as interpreted by the Comptroller, and correctly so, privileges, like those covering the removal of shell, sand, or gravel, would include the removal of oil and other minerals. It must be concluded therefore, that there is no conflict here with the net result of the Comptroller's decision since he was not dealing with the sale by the Government of any surplus property or of any privilege.

/s/ Donald J. Chaney
DONALD J. CHANEY

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

Feb. 20, 1964

Memorandum

TO: Secretary

FROM: Assistant to the Secretary and
Legislative Counsel

SUBJECT: Hearings on Revenue Sharing Bills
S. 1363, Senate Commerce Committee on
February 21, 1963.

By letter of February 18, 1964, the National Association of Counties recommended three (3) changes in the revenue sharing bills. These changes and our comments thereon are as follows:

1. All timber and mineral receipts from Federally acquired refuge lands and public lands should continue to be shared—25 percent to the counties and 75 percent to Government.

   Effect: On public lands—None. S. 1363 provides for the payment of 25 percent of revenues, including timber and mineral receipts, as under present law.

   On acquired lands—Some counties would receive disproportionate amounts—25 percent for mineral and timber receipts plus three-fourths of 1 percent for all other revenues. The non-mineral, non-timber counties would receive only three-fourths of 1 percent of revenues. At very least, this should be either-or basis. Also, it would require the Department to seek additional appropriations of at least $350,000 annually. Destroys the purpose of bill, which is to provide for equally distribution of all revenues.

2. Counties want guarantee that they will receive minimum amounts even if no revenues. They suggest differences come from the sale of duck stamps.

   Effect: Duck stamp funds now used specifically for land acquisition only. Conservationists oppose any attempt to use these funds for any other purpose. Further, this destroys shared-revenue approach and makes it a direct payment-in-lieu-of taxes bill. This is a bad precedent.

3. Counties want Federal Government to pay assessments of drainage and school districts on lands acquired herafter.

The Department's report opposes payment of bonded indebtedness in land acquisition. We would also oppose on annual basis, since amounts may or may not be fixed. This amounts to taxation of Federal loans. Legislation on this general subject H.R. 5565 has been introduced. Our report, which is favorable with amendments, is at the Bureau of the Budget.

Finally, the counties suggest that the value of acquired lands within the refuge system be determined periodically by a joint appraisal committee of Interior, counties, and third party. This appraisal would be used for determining revenues to counties.

Effect: The cost of periodic appraisal of nearly 3.5 million acres of land would be overwhelming and probably not justified.

/s/ Lewis A. Sigler
for Max N. Edwards

DBFinnegan:ah 2/20/64

Copy to: Files

APPENDIX C

STATE OF ALASKA /
DEPARTMENT OF LAW /
Office of the Attorney General /

PINK

JAY S. HAMMOND, *Governor*
POUCH K—STATE CAPITOL
JUNEAU 99811

November 12, 1975

Elmer B. Staats
The Comptroller General of
the United States
General Accounting Office Building
441 G St.
Washington, D.C. 20548

Dear Comptroller General Staats:

I am writing to you about a decision issued by your office July 29, 1975, (File No. B-118678) in response to a request from the Solicitor of the Department of the Interior. The decision holds that the disposition of receipts from oil and gas leases on wildlife refuges "is governed by 16 U.S.C. § 715s, and not by the Mineral Leasing Act." (Page 3). The basis for this holding is the conclusion that a 1964 amendment which added the term "minerals" to Section 715s impliedly repealed the Mineral Leasing Act's applicability to wildlife refuges. The decision, which appears to be based on views put forward in the Solicitor's draft opinion, rests entirely on a reading of the statutes and does not analyze the legislative history or contemporaneous facts. Since an implied repeal or amendment necessarily rests upon legislative intent, *United States* v. *Borden*, 308 U.S. 188, 198 (1939) this omission is most unfortunate.

A review of the legislative history of the 1964 amendment to 16 U.S.C. § 715s clearly demonstrates that Con-

gress intended no such repeal and that, on the contrary, Congress intended to continue the scheme for disposition of funds which was in existence prior to the amendment.

The key to determining Congress' intention when it added the term "mineral" to section 715s is an understanding of the different treatment accorded those oil and gas revenues derived from leases on wildlife refuges reserved from the *public* lands and those derived from leases on wildlife refuges created from *acquired* lands. Prior to the 1964 amendment, section 715s originally applied to:

> ". . . surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand or gravel, or other privileges on refuges . . ." Act of June 15, 1935, § 410, 49 Stat. 383.

While the language "other privileges" is perhaps broad enough to encompass revenues from all mineral leases, including oil and gas leases, all the evidence indicates that the Department of the Interior in its administration of the Act never construed this language as applying to revenues from oil and gas leases. For example, regulations issued under the authority of 16 U.S.C. § 715s are silent on the meaning of the term. 50 C.F.R. part 34. Nor were revenues from oil and gas leases on wildlife ranges actually distributed in accordance with the provisions of section 715s. A case in point is the Kenai National Moose Range which produced oil valued at approximately $33 million in 1963. In testimony before the Senate Commerce Committee, the Fish and Wildlife Service submitted a report showing payments to states under section 715s prior to the 1964 amendments. This report shows payments to Alaska from revenues attributable to the Kenai Moose Range as $1,768 in 1963. Obviously, this did not include the revenues from oil and gas leases then producing in the Range. *Hearing on* S.179, S.1363, S.1720, and S.2498 *Before the Committee on Commerce, United States Senate*, 88th Cong. 2d Sess., Ser. 48, at p.

34 (1964) (hereinafter, "Senate Hearings") The State of Alaska's records indicate that federal royalty payments from the Kenai Moose Range were distributed to the State both prior to and after the 1964 amendment, in accordance with the Mineral Leasing Act, not section 715s. Finally, it should be noted that if the term "other privileges" were construed to encompass revenues from oil and gas leases, then a conflict between the Mineral Leasing Act and section 715s would have existed from the time of initial enactment of section 715s in 1935.

Since section 715s did not apply to revenues from oil and gas leases on wildlife refuges, one might reasonably ask why the Secretary of the Interior testified that:

> "Under existing law, enacted in 1935, the counties in which our refuges are located receive 25 percent of the net revenues from operations on national wildlife refuges, such as oil production, grazing, timber harvest and the like." (emphasis added).

Senate Hearings, supra, at p. 19, *Hearings on* HR. 1127, HR. 2393, HR. 9030, HR. 11008 *Before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries,* United States House of Representatives, 88th Cong., 2d Sess. Ser. 88-21, at p. 34 (1964) (hereinafter *"House Hearings"*) The answer is that section 715s, although not by its own terms applicable to oil and gas revenues was made applicable to revenues from oil and gas leases on *wildlife refuges created from acquired lands,* by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.* Section 355 of that act provides for disposition of revenues from oil and gas leases on acquired lands as follows:

> § 355. Disposition of receipts
>
> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be dis-

> tributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however,* That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress."

Thus, when the Secretary of the Interior testified about disposition of revenues from oil production in accordance with the requirements of section 715s, he was referring only to refuges created from acquired lands. Throughout the House and Senate hearings the only discussion of oil and gas revenues from wildlife refuges is references to the Delta National Wildlife Refuge located in Plaquemines Parish, Louisiana. *Senate Hearings, supra* at 30-33, 45, 81, 98. *House Hearings, supra* at 42, 48, 61-68, 84-85. *See also,* H.R. Rep. No. 1753, 88th Cong. 2d Sess. (1964). This is a wildlife refuge created from acquired lands, the oil and gas revenues from which were distributed pursuant to the Mineral Leasing Act for Acquired Lands. *See United States* v. *Leiter Mineral,* 204 F.Supp. 560, 562 N.4 (S.D.La. 1962) rev'd 329 F.2d 85 (1964) vacated, 381 U.S. 413 (1964).

In the light of the above, the question presented by the 1964 amendment to section 715s is whether by adding the term "mineral" Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920; or did Congress intend to change the prior practice, so that oil and gas revenues from all wildlife refuges, regardless of their

manner of creation, would be distributed pursuant to section 715s.

Since distribution of revenues under the Mineral Leasing Act and under section 715s is substantially different, in one case payments being made to States and the Reclamation Fund and in the other to counties and the Wildlife Refuge Fund, it is highly unlikely that Congress would have intended to repeal the Mineral Leasing Act and replace it with section 715s without any discussion or comment by any of the parties affected. Yet, there is not one single acknowledgement in the legislative history of a change. Indeed, the legislative history makes clear beyond peradventure that none of the parties expected any change in the distribution of revenues from wildlife refuges reserved from the public domain.

Certainly the Department of the Interior, which sponsored one of the bills which added the term "minerals," did not envision any change in the treatment of revenues from reserved wildlife refuges. The Secretary of the Interior testified that "all of the revenues from refuge operations on *acquired lands* would be placed in a pool for equitable sharing by all the counties in which we have units of the national wildlife refuge system . . . As to *reserved public lands*, there would be no change in the present payment of 25 percent of net receipts from such lands." *Senate Hearings, supra* at p. 19 (emphasis added). Mr. Davis Janzen, Director of the Bureau of Sport Fisheries and Wildlife testified that

> "S. 1363 [sponsored by Interior] is not an "in lieu of taxes" proposal and is not intended to equate payments to counties with the tax losses they have sustained. It is merely a revision of existing authority for the sharing of revenues to effect a more equitable distribution of available revenue to the various counties in which the acquisition of refuge lands in fee has occurred or is contemplated." *Senate Hearings, supra* at 60 (emphasis added).

A table prepared by the Fish and Wildlife Service and submitted to the House and Senate Committees shows that the bill sponsored by Interior would have no effect on those refuges which did not have acquired lands. *Senate Hearings, supra* at p. 33-41. *House Hearings, supra* at p. 89-96. Indeed, this table is so specific on this point that no reasonable doubt may exist that no change was intended in the distribution of oil and gas revenues from refuges reserved from the public lands. A letter by John Carver, Assistant Secretary of the Interior to the Chairman of the House Merchant Marine and Fisheries Committee contained a section-by-section analysis of the Department's bill. This analysis made no mention of any change contemplated by Interior in the treatment of oil and gas revenues on wildlife refuge created from reserved public lands. *House Hearings, supra,* at 6-10. At many points in the House and Senate hearings, Department of the Interior officials commented on the affect the proposed bills would have on revenues received by and expended from the Wildlife Refuge Fund. In doing so, these officials never once stated that the Fund would receive as a new source of revenue revenues from oil and gas production on wildlife refuges reserved from the public domain. Yet, if the bills were intended to apply to such refuges this new source of potentially enormous revenue for the Fund would have been obvious. (Interestingly, the then Comptroller General construed the bill as *reducing* the revenues available to the Bureau of Sport Fisheries and Wildlife. He gave no indication that he understood the bill to mean revenues from oil and gas production on reserved wildlife refuges would be paid to the Fund. *Senate Hearings, supra,* at 10-13.)

Nor does it appear that any of the States understood the bill as affecting the revenues they received from oil and gas production on reserved wildlife refuges pursuant to the Mineral Leasing Act. Governor Egan of Alaska stated that he was "in accord with the general purpose and principles" of the bills. *Senate Hearings, supra* at

77. Since Alaska stood to lose several million dollars in revenue if the bills repealed the distribution formula of the Mineral Leasing Act, Governor Egan obviously did not regard the bill as making such a repeal. Senator Bartlett from Alaska, likewise understood the bill as raising no major concern for Alaska. *Senate Hearings, supra* at 64-65.

The original bill sponsored by the Department of the Interior provided that counties would receive payments based on the "adjusted value" of the acquired lands. *See Senate Hearings, supra,* at 3 (the original version of S.1363). Under this bill revenues paid to Plaquemines Parish, Louisiana would have been reduced by approximately $280,000. Fifteen other counties would have suffered much smaller reductions in revenues received because the 25% they were receiving in accordance with the provisions of the pre-1964, section 715s exceeded the three-fourths of one percent of adjusted value they would have received under the Department of the Interior bill. In order to protect the revenues of these counties Senator Metcalf proposed an amendment to the Department's bill which would allow a county to choose to receive payments either under the "adjusted value" formula or under the 25% of revenues produced from the refuge formula. *Senate Hearings, supra,* at 30-33. This amendment was adopted and became part of the final amendments to section 715s. It seems unlikely that Congress would act expressly and decisively to protect revenue payments to certain counties whose revenues derived principally from oil and gas leases, while at the same time depriving States of substantially larger shares of oil and gas revenues without the slightest comment on the matter.

I believe the facts discussed above clearly indicate that neither Congress, the Department of the Interior, nor anyone else intended the 1964 amendment to section 715s to repeal the Mineral Leasing Act or in any other way change the distribution scheme for funds from wildlife refuges reserved from the public lands. The legislative

history when taken as a whole is unmistakably clear that the amendment was intended to apply only to wildlife refuges created from acquired lands. Indeed, it was only because the Department of the Interior *had been unable to acquire lands for refuges and waterfowl production* areas that the need for this amendment arose.

Implied repeals are disfavored and if two statutes reasonably can be interpreted consistently without frustration of their intent or purpose, then no repeal should be implied. *Morton* v. *Mancari*, 417 U.S. 535, 549-551 (1974); Sutherland, Statutory Construction, §§ 23.09, 23.10 (Sands, 4th ed., 1972). As we have shown, and as the legislative history would seem to require, the Refuge Act amendment of 1964, the Mineral Leasing Act, and the Mineral Leasing Act for Acquired Lands can be interpreted consistently and without frustration of purpose because of the different treatment afforded to refuges reserved from the public lands and those created from acquired lands. That being so, no repeal should be implied.

At any event, even if the Mineral Leasing Act were impliedly repealed by the 1964 amendment to section 715s, that repeal would itself have been impliedly repealed and the Mineral Leasing Act reinstated with respect to public lands in Alaska, by the Alaska Native Claims Settlement Act of 1971. 85 Stat. 688. Section 9(d) in the Act provides:

> (d) All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall

be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

Section 3(e) of the Act defines public lands as "all Federal lands and interests therein located in Alaska" with two exceptions not relevant here. Hence Congress has expressly reaffirmed the distribution scheme for federal royalties, rentals and bonuses in effect at the time Alaska became a State in 1959. This was, of course, the scheme required by the Mineral Leasing Act. *See* Alaska Statehood Act, § 28(b), 72 Stat. 339 (1971). It is clear that Congress in 1971 understood that revenues from all federal oil and gas leases in Alaska were to be distributed under the Mineral Leasing Act. (Other than from Naval Petroleum Reserve No. 4. See H. Conf. Rep. 92d Cong. 92-746 at 35 (1971)). This may be regarded as further indication that Congress did not intend and did not interpret its 1964 amendment to section 715s as repealing the Mineral Leasing Act with respect to oil and gas revenues from refuges reserved from the public lands. This would seem the proper interpretation. However, if one is wedded to the disfavored doctrine of repeal by implication, then certainly the 1971 Alaska Native Claims Settlement Act is as much an implied repeal of the 1964 amendment to section 715s as that amendment was of the Mineral Leasing Act.

For the reasons discussed above, I respectfully request that your decision of July 29, 1975 be modified to make clear that oil and gas revenues from leases on wildlife refuges reserved from public lands are to be distributed

according to the Mineral Leasing Act of 1920 and not section 715s, as amended.

Sincerely yours,

/s/ Avrum M. Gross
AVRUM M. GROSS
Attorney General

cc: Senator Ted Stevens
Senator Mike Gravel
Congressman Donald E. Young

AMG:db:FB

bcc: Guy Martin
Sterling Gallagher

APPENDIX D

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

March 16, 1976

Mrs. Rollee Lowenstein
Assistant General Counsel
General Accounting Office
Washington, D.C. 20548

Dear Mrs. Lowenstein:

Your inquiry dated December 8, 1975, to the Secretary of the Interior regarding Comptroller General's Decision Number B-118678 has been referred to us for reply. In that inquiry you requested our views on issues raised by the Attorney General of Alaska in his November 13, 1975 letter to the Comptroller General. In that letter, the Attorney General suggests that Comptroller General's Decision Number B-118678 be modified to provide that oil and gas revenues from leases on wildlife refuges *reserved* from public lands should be distributed according to Section 35 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 191), and not 16 U.S.C. § 715s, as amended. The Interior Department disagrees with each and every argument made by the Attorney General of Alaska, and requests that B-118678 be affirmed.

The State of Alaska argues that the legislative history of 16 U.S.C. § 715s shows that Congress did not intend this statute to encompass receipts from mineral leases on reserved wildlife refuges. The statute does, however, clearly and explicitly on its face manifest such an intent. And the "plain meaning rule" for stautory interpretation, enunciated by the U.S. Supreme Court in

Caminette v. *United States*, 242 U.S. 470 (1917) dictates that:

> the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the court is to enforce it according to its terms . . . . When the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

The statute in question, 16 U.S.C. § 715s, was extensively amended in 1964. This amendment created, for the first time, a separate fund in the Treasury for the benefit of the National Wildlife Refuge System. Section 715s(a) unambiguously provides that into this fund shall be deposited "*all* revenues received by the Secretary of the Interior from the sale or other disposition of . . . minerals . . . during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service . . . ." (Emphasis added). Nor is there any doubt about what lands Congress covered in this enactment, for § 715s(a) explicitly provides:

> The National Wildlife Refuge System . . . includes those lands and waters administered by the Secretary as wildlife refuges, lands *acquired or reserved* for the protection and conservation of [endangered species], wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order. (Emphasis added).

"Reserved" land in this context refers to land segregated from the public domain for use as wildlife refuges.[1]

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[1] "Reserved" lands are treated in § 715s as lands separate and distinct from "acquired" lands. The natural implication from this

The language of the statute clearly shows that Congress intended both acquired and reserved public wildlife refuge lands to be covered. This is further confirmed by § 715s(c), in which separate provisions for disposing of money from the fund are made for acquired lands and for reserved lands. Thus, the plain language of the statute demonstrates beyond any doubt that Congress was acutely aware that both acquired and reserved public lands were involved in the wildlife refuge system, and intended that *all* revenue collected from mineral leases on these lands should go into the special fund, regardless of whether the source of the funds was acquired land or reserved land. Since the plain meaning of the statute is not in doubt, discussions of legislative history are irrelevant.

Even if a review of the legislative history were appropriate here, such a review does not support the conclusions of the Alaska Attorney General that Congress did not intend to change the allocation of revenues from reserved refuge lands. The fact that this aspect of the legislation was not discussed at the hearings does not indicate that Congress did not consider or intend the change of revenue allocation, and the statute on its face exhibits a clear legislative intent to do so.

The hearings clearly reflect, as does the plain language of the statute that both acquired and reserved public lands were under consideration. The primary thrust of the new legislation was to provide for more equitable distribution of revenues from acquired lands because the United States Fish and Wildlife Service was encountering strong opposition from the counties in its land ac-

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is that the statute refers to reserved public domain lands, because all wildlife refuges are on either acquired land or public domain land. Acquired lands are acquired for specific purposes and are not customarily reserved for any other purpose. Public domain lands, on the other hand, are subject to being set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described as "reserved".

quisition program. This was due to the fact that those acquired lands without oil and gas revenues were producing very little revenue for distribution to the counties.[2] Under the amendment to § 715s, this would be remedied since, as to acquired lands, the counties would receive either 25 per cent of the net revenues received by the Secretary from the disposition of minerals and other products or ¾ of 1 per cent of the adjusted cost of the acquired area, whichever is greater.

The novel scheme for rectifying the inequities to the counties only applied to acquired lands. This is why in illustrating the operation of the new scheme only acquired refuge lands were discussed. It is why the table prepared by the Fish and Wildlife Service (referred to at page 5 of the Alaska Attorney General's letter) showed only acquired wildlife refuges. But the logical fact that only acquired land refuges were used to illustrate the new scheme contained in subsection (c) (2) of 715s as amended does not mean that only acquired lands are covered by the changes incorporated in subsection (a) of 715s. Subsection (a) explicitly encompasses both acquired and reserved public lands. Furthermore, it is clear that oil and gas revenues were within the contemplation of Congress in considering the bill, since oil and gas revenues were repeatedly mentioned during the hearings. (See, e.g., *Hearings Before the Committee on Commerce, U.S. Senate*, 88th Cong., 2d Sess., Ser. 48 at pp. 56, 58.)

So much attention was focused on the new provisions of subsection (c) (2) of the hearings that no discus-

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[2] Revenues for oil and gas acquired lands had been distributed in accordance with § 715s since 1947 when the Mineral Leasing Act for Acquired Lands was enacted. Section 6 of that Act, 30 U.S.C. § 355, provides for the distribution of oil and gas receipts "in the same manner as prescribed for other receipts from the lands. . . , the intention of this provision being that this chapter shall not affect distribution of receipts pursuant to legislation applicable to such lands. . . ."

sion was held about the changes which were incorporated in subsection (a). Apparently, the states also focused their attention on subsection (c) (2) and failed to realize the import of the changes in subsection (a). If the bill as passed truly did not embody the intent of Congress, then it is for Congress to take corrective action by amending 715s; as it now stands, it simply cannot be interpreted as the Attorney General of Alaska suggests.

The Attorney General also argues that as of 1971, the 1964 amendment to 715s was impliedly repealed with respect to public lands in Alaska by the Alaska Native Claims Settlement Act, 85 Stat. 688, section 9(d). That section provides, in pertinent part, that all revenues received by the United States from disposition of minerals from public lands in Alaska "shall be distributed as provided in the Alaska Statehood Act . . . ."

But the Alaska Statehood Act, § 28(b), does not provide that all federal mineral receipts in Alaska are to be distributed under the Mineral Leasing Act. It merely amends the Mineral Leasing Act to refer to Alaska as a State rather than a Territory. Thus, the Alaska Statehood Act merely refers to Alaska's share of the revenues which *are* distributed under the Mineral Leasing Act; it does *not* make any provisions as to *which* revenues are so distributed. Therefore, there is no apparent conflict between the Alaska Native Claims Settlement Act and 16 U.S.C. § 715s due to the citation in ANCSA of the Alaska Statehood Act. Since there is no apparent conflict in this case, the State of Alaska would have the Comptroller General create one by his interpretation of the two statutes. But the rule is well established that an interpretation which creates a conflict between two statutes is disfavored over one which reconciles them (73 Am Jur 2d, Statutes, § 254, p. 425). Such a disfavored interpretation, even if considered at all, would require a solid basis in the legislative history of ANCSA to be convincing.

The legislative history of ANCSA furnishes no support for such an interpretation, but shows overwhelmingly that there was no intention to alter the basic scheme for distribution of mineral revenues. Section 9(d) was intended only to provide a source of revenue for the Alaska Native Fund by establishing a 2% overriding royalty on mineral revenues from public lands, and its reference to the Alaska Statehood Act was intended merely as a reference to the status quo. As stated in House Report 92-253, 1971 U.S. Code Cong. and Adm. News at 2193, "[t]he purpose of H.R. 10367 is to provide an equitable solution to the claims made by the Natives of Alaska through a combination grant of land and money. Under the bill the Natives would receive . . . $500,000,000 from mineral reserves *that would otherwise go to the State of Alaska.*" (Emphasis supplied). The conference committee stated that most of the $500,000,000 to be paid to the Natives "would otherwise be paid to the State *under existing law.*" (Sen. Rept. No. 92-581, 92 Cong., 1st Sess. (1971) at 35, emphasis supplied). Thus, the only change intended was to divert a percentage of mineral lease revenues from the existing scheme for the benefit of the natives.

At the time ANCSA was passed, the amended version of 16 U.S.C. § 715s had been on the books for several years, and was thus part of the existing scheme for disposing of mineral revenues. It carved out a narrow exception to the general provisions of the Mineral Leasing Act, and this exception was sustained by the later references of Congress to the existing scheme, since:

> Where a statute is intended to cover all the ground of prior ones on the same subject, and revises the entire law on such subject, all prior conflicting laws will be repealed even though they are special acts. However, where the scheme of revision clearly implies a compilation and continuation of existing general laws, together with such changes as are necessary to harmonize them, the revised laws will not

> operate as a repeal of a special statute which has already engrafted an exception under the general law. 73 Am Jur 2d, Statutes § 413, p. 519.

There is considerable evidence that the Congress was not aware of the full extent of the exception carved out by 715s at the time it considered ANCSA, but this only shows the absurdity of contending that Congress intended to undo the effects of 715s which have only recently been realized. While Congress may not have had an accurate picture of all of the details of the general mineral revenue scheme at the time, it is still clear that Congress intended no changes in that scheme.

Various other provisions of ANCSA corroborate this interpretation. Section 2(b) of the Act, for example, provides that:

> the settlement should be accomplished . . . without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

This manifests an intent to minimize the effects of the Act on matters unrelated to the settlement of native claims, and is inconsistent with an interpretation of Section 9(d) of the Act which would override the application of 16 U.S.C. § 715s with respect to Alaska. That interpretation would indeed create a "special relationship" which does not exist with respect to the other 49 states.

Sections 12(a) and 14(f) of the Act indicate that the United States fully intended to retain its mineral rights in National Wildlife Refuges to the greatest extent possible. Section 12(a) provides that when a Village Corporation under the Act selects a surface estate in National Wildlife Refuge land, or in Naval Petroleum Reserve No. 4, the Regional Corporation for that region should select the subsurface estate in an equal acreage from *other* lands within the region if possible. Section 14(f) makes

similar provisions for surface and subsurface patents where wildlife refuge land is involved.

Further evidence that the Alaska Attorney General's interpretation of ANCSA is incorrect is contained in section 9(g) of ANCSA, which provides that the provisions of section 9 shall no longer apply after $500,000,000 has been paid into the Alaska Native Fund. If § 9(d) were interpreted to alter the general scheme for distribution of mineral revenues, then its automatic repeal when the $500,000,000 figure was reached would make no sense at all. There is no logical reason why the wildlife refuge fund should stop receiving *all* revenue from reserved refuges while a percentage of that revenue is being paid to the native fund, and then suddenly start receiving all the revenue again when the 2% override is lifted.

By far the most persuasive proof that ANCSA was not intended to override 16 U.S.C. § 715s and that there is in fact no conflict between the two is found in the controversy, which arose during early consideration of ANCSA, about whether § 28(b) of the Statehood Act provides a substantive grant of mineral revenues to the State. Earlier in our discussion, we demonstrated that § 28(b) of the Statehood Act, referred to in ANCSA § 9 (d), contains no such substantive grant. If it did contain such a grant, as the Alaska Attorney General asserts, then § 9(d) of ANCSA would be *unconstitutional.* And, ironically, this argument was first made by none other than the Alaska Attorney General during Senate hearings on S. 1830 in 1969. (The bill was a precursor of ANCSA.)

While S. 1830 was under consideration, the Alaska Federation of Natives sought a change in the bill to provide a 2% overriding royalty similar to the one ultimately incorporated in ANCSA. The Alaska Attorney General filed a brief with the Senate Committee on Interior and Insular Affairs in which he asserted that such a grant would conflict with § 28(b) of the Statehood Act, and argued that:

> The United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because the Statehood Act constitutes a compact in the nature of a contract between two sovereign governments. (*Hearings on S. 1830, Before the Committee on Interior and Insular Affairs, U.S. Senate*, 91st Cong., 1st Sess., (1969) at 264.

If the 2% were deducted from the royalties before apportionment of the State's share, he argued, the State would be in effect deprived of its 90% share of the 2% portion, contrary to the Statehood Act.

The Solicitor of the Department of the Interior answered these arguments in a brief filed with the Committee. He explained that there was no conflict with the Statehood Act because

> it is not Section 28(b) of the Statehood Act which grants a percentage of mineral revenues to the State of Alaska. The section is merely a perfecting clause which substitutes the word "State" for the word "Territory" in Section 35 of the Mineral Leasing Act, 41 Stat. 450 (1920), as amended. . . . To hold that Section 28(b) contains a substantive grant of mineral revenue royalties which in turn is contained within a Federal-State compact would result in the requirement of an approval by the State of Alaska of any future Mineral Leasing Act amendment proposed by Congress. This cannot have been the intended result. Section 28(b) of the Statehood Act was not intended to be a substantive provision, does not operate as such, and furthermore does not come within the compact at all. Thus, Congress is free to deal with revenues under the Mineral Leasing Act in any manner which it deems advisable. (*Senate Hearings, supra*, at 573)

This reasoning was apparently accepted by the Congress, for the 2% overriding royalty was ultimately made a part of ANCSA, and no problem with its constitutionality was recognized. It seems the correct reasoning to us, but if, as the Alaska Attorney General now asserts, § 28(b) of the Statehood Act was a substantive grant of mineral revenue royalties, then by his own arguments made before the Senate Committee in 1969, § 9(d) of ANCSA would be unconstitutional. Thus the very interpretation which would create a conflict between § 9(d) of ANCSA and 16 U.S.C. § 715s also resolves that conflict by rendering § 9(d) void.

We feel that the foregoing discussion amply illustrates the invalidity of the position now advocated by the Attorney General's of Alaska. There should be no modification of Comptroller General's decision B-118678 based on the arguments he has submitted. We do wish to point out, however, that there is a new development which will have some effect on the disbursement of revenues from wildlife refuges in Alaska.

Public Law 94-204, enacted on January 2, 1976, Sec. 2(a) provides as follows:

> From and after the date of enactment of this Act, or January 1, 1976, whichever occurs first, any and all proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting corporation or individual entitled to receive benefits under such Act. As such withdrawn or formerly reserved lands are conveyed, the Secretary shall pay from such account the proceeds, together with interest which derive from contracts, leases, permits, rights-of-way, or easements, pertaining to such lands or resources of such lands, to the appropriate corporation or indi-

> vidual entitled to receive benefits under the Settlement Act. The proceeds derived from contracts, leases, permits, rights-of-way, or easements, pertaining to lands withdrawn or reserved, but not selected or elected pursuant to such Act, shall, upon the expiration of the selection or election rights of the corporations and individuals for whose benefit such lands were withdrawn or reserved, be paid as would have been required by law were it not for the provisions of this Act.

This provision is clearly a substantive one and would create a specific exception to 16 U.S.C. § 715s with respect to any wildlife refuge lands in Alaska which have been withdrawn for native selection pursuant to ANCSA. Furthermore, Sec. 12(b)(1) and (2) of P.L. 94-204 mandate certain conveyances of title to both land and oil, gas, and coal within the Kenai National Moose Range, which is a reserved wildlife refuge. Some of the revenues from Kenai which would otherwise be disbursed under 16 U.S.C. § 715s should thus be going instead to either the escrow fund or directly to the grantees of certain land and mineral rights within the Kenai Moose Range. While these developments do alter the situation with respect to some lands in Alaska, they do not necessitate a modification of the Comptroller General's opinion, which is general in nature and was issued prior to the enactment of this new statute.

Sincerely yours,

/s/ H. Gregory Austin
H. GREGORY AUSTIN
Solicitor

cc: Associate Solicitor, Conservation and Wildlife
Assistant Solicitor, Fish and Wildlife
Director, Bureau of Land Management
Director, Fish and Wildlife
Secretary's Reading Files
DER-Reading File
DER-Reading File (Minerals)
Docket
Sol. Reading File
SSutherland
Attorney General of Alaska

SOL:SSutherland:ljj 3-2-76 x4803

APPENDIX E

STATE OF ALASKA
DEPARTMENT OF LAW

Jay S. Hammond, Governor

April 1, 1976

Mrs. Rollee Lowenstein
Assistant General Counsel
General Accounting Office
Washington, D.C. 20548

Dear Mrs. Lowenstein:

In November, I wrote to Comptroller General Staats to request that he reconsider his decision in matter of: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System, File No. B-118678. You advised me in December that the Secretary of the Interior had been asked to comment upon my request and that after receipt of his response you would consider the matter further.

I recently received the comments of the Solicitor of the Department of the Interior and hereby submit a brief response to those comments. I also ask that you give this matter expeditious consideration, as the payment to the State of Alaska of more than $3 million dollars in revenues from the Swanson River Oil Field is being held by the Department of the Interior pending the Comptroller General's reconsideration.

The Solicitor relies upon the "plain meaning rule" for his conclusions that the "meaning of the statute is not in doubt" and "discussions of [the] legislative history are irrelevant." Although one might ask why, if the meaning is so plainly beyond peradventure, it took the solicitor more than 10 years to discover the meaning; the best response to those who seek to confine their understanding

of the law solely to the words of a statute has been eloquently put by Justice Frankfurter:

> "The notion that because the words of a statute are plain, its meaning is also plain, is merely a pernicious over-simplification . . . . to which lip service has an occasion been given here, but which since the days of Marshall this Court has rejected, especially in practice. [citations omitted] A statute like other living organisms, derives significance and sustenance from its environment, from which it cannot be severed without being mutilated. *United States* v. *Monia*, 317 U.S. 424, 431-32 (1943) (Frankfurter, J., dissenting)

See also Kokoza v. *Belford*, 417 U.S 642, 650 (1964); *United States* v. *Campos-Serrano*, 404 U.S. 293, 298 (1971); *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235, 250, (1970); *NLRB* v. *Allis Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967).

Even if it is conceded the "plain meaning rule" on occasion may be a useful tool of statutory construction, it is obvious that such rule of construction cannot be blindly followed in contravention of another rule of statutory construction—namely, the rule that implied repeals are disfavored and if two statutes reasonably can be interpreted consistently, then no repeal should be implied. *Morton* v. *Mancari*, 417 U.S. 535, 549-551 (1974). Yet this is precisely what the solicitor asks be done, since it is possible to give a literal interpretation to § 715s only by assuming that Congress impliedly repealed section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. The solicitor in his most recent comments managed to avoid this obvious conflict by analyzing § 715s without mention of the Mineral Leasing Act and in total disregard of the fact that his initial memorandum, the Comptroller General's decision, and my letter to you of November 12, 1975 all dealt with the issue of whether or not § 715s *must be interpreted* as impliedly repealing section 35 of the Mineral Leasing Act.

The solicitor argues that review of the legislative history supports the conclusion that Congress intended to change the allocation of revenues from *reserved* refuge lands. The solicitor offers no citations to the legislative history to justify this assertion,[1] but explains that lack of written record by noting that "[s]o much attention was focused on the new provisions of subsection (c) (2) at the hearings that no discussion was held about the changes which were incorporated in subsection (a)." The solicitor's explanation overlooks the fact that the changes in subsection (c) (2) cannot be divorced from the changes in subsection (a). The size of the fund created in subsection (c) (2) necessarily depended on the products of the wildlife refuge ennumerated in subsection (a). Thus if the revenues from oil and gas found on wildlife refuges created from reserved lands were to be included in the fund, the fund would be larger than if such revenues were not included. That being so, it is not unreasonable to expect Congressmen and Interior officials to take account of revenues from that source when comparing the income to the fund against the expenditures from the fund. Yet, in none of the discussions of the size of the fund does anyone acknowledge or make reference to the change in subsection (a) as providing a

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[1] The solicitor's only citations to the legislative history are to the testimony of Mr. Janzen, a Department of the Interior official. The solicitor asserts Mr. Janzen repeatedly mentioned oil and gas revenues during the hearing. I would point out that Mr. Janzen also referred frequently to "acquired" or "purchased" refuge lands. (My count of Mr. Janzen's prepared testimony shows 1 reference to "oil and gas" and 16 references to "acquired" or "purchased" lands). As set forth in my earlier letter to you, oil and gas revenues from wildlife refuges created from *acquired* lands must be distributed in accordance with § 715s. *See* Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.* Thus, Mr. Janzen's reference to oil and gas revenues in the context of discussions about acquired lands is entirely consistent with the interpretation of the 1964 amendments which I urge and certainly affords no grounds for the conclusion that Congress intended to repeal the Mineral Leasing Act.

new source of revenues to the fund. Indeed, the table submitted to both the House and the Senate by the Department of the Interior excluded oil and gas revenues from reserved wildlife refuge.[2] *See Senate Hearings*, at 33-41; *House Hearings*, at 89-96.

The solicitor's comments to you, offer no substantial reason why the 1964 amendments to 16 U.S.C. § 715s should be read to impliedly repeal the Mineral Leasing Act of 1920. Nor do the solicitor's comments rebut any of the evidence which demonstrates that *Congress did not intend to repeal* the Mineral Leasing Act. I, therefore, continue by request that you modify your decision to make clear that section 715s applies only to oil and gas reserves from wildlife refuges created from acquired public lands.

I look forward to an early answer.

Sincerely yours,

/s/ Avrum M. Gross
AVRUM M. GROSS
Attorney General

AMG-db:FHB

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[2] The solicitor states that the table showed only acquired wildlife refuges. However, this is clearly incorrect, since a perusal of the column labeled "acquired acres" shows several wildlife refuges with no acquired acreage, including all 3 refuges in Alaska. If either S. 1363 or S. 2498 had been intended to bring oil and gas revenues under § 715s then the entries in those columns for "Kenai" would be in the millions of dollars rather than $1,768.00.

SUPREME COURT OF THE UNITED STATES

No. 79-1890

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
PETITIONERS

v.

ALASKA, ET AL.

ORDER ALLOWING CERTIORARI

Filed October 6, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

The case is consolidated with No. 79-1904 and a total of one hour is alotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 79-1904

KENAI PENINSULA BOROUGH, PETITIONER

v.

ALASKA, ET AL.

ORDER ALLOWING CERTIORARI

Filed October 6, 1980

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The case is consolidated with No. 79-1890 and a total of one hour is allotted for oral argument.

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79-1890

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NOS. 78-1890 and A-949

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., AND KENAI PENINSULA BOROUGH,

Petitioners,

v.

STATE OF ALASKA,

Respondent.

BRIEF IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NOS. 78-1890 and A-949

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., AND KENAI PENINSULA BOROUGH,

Petitioners,

v.

STATE OF ALASKA,

Respondent.

BRIEF IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The State of Alaska opposes the petitions for a writ of certiorari directed to the United States Court of Appeals for the Ninth Circuit filed by petitioners Cecil D. Andrus, Secretary of the Interior, *et al.,* (hereafter "the Federal Petitioners"), and the Kenai Peninsula Borough.

OPINIONS BELOW

The opinion of the court of appeals is reported at 611 F.2d 1210 (9th Cir. 1980). The opinion of the district court is reported at 436 F. Supp. 288 (D. Alaska 1977).

JURISDICTION

Respondent State of Alaska accepts the petitioners' statements of jurisdiction.

QUESTION PRESENTED

Whether revenues from federal oil and gas leases on reserved public lands in the Kenai National Moose Range (part of the National Wildlife Refuge System) are to be distributed according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, which provides that 90 percent of such revenues are to be paid to the State of Alaska and 10 percent are to be covered into the United States Treasury, or pursuant to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C § 715s, which allocates 25 percent of the revenues it governs to the counties in which wildlife refuges are located and reserves 75 percent for federal purposes related to the Act.

STATUTES INVOLVED

1. Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191.

2. The Wildlife Refuge Revenue Sharing Act of 1935, as amended, 16 U.S.C. § 715s.

3. Sections 3 and 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 352 and 355.

4. Sections 6(k) and 28(b) of the Alaska Statehood Act of 1958, 43 U.S.C. note prec. § 21.

5. Section 9(d) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1608(d).

STATEMENT OF THE CASE

In the Mineral Leasing Act of 1920, 30 U.S.C. § § 181 *et seq.*, the United States Congress authorized the Secretary of the Interior to lease certain federally-owned mineral deposits, including oil and gas deposits. Section 35 of the Act, 30 U.S.C. § 191, as originally enacted, provided that the revenue received from such leases was to be paid into the United States Treasury for periodic distribution. The State within which the land was located was to receive 37½%, the Federal Reclamation Fund was to receive 52½%, and the Treasury was to receive 10%. The Territory of Alaska was excluded from this distribution scheme.

In 1947, Congress passed two laws dealing with the distribution of revenues derived from mineral leases on federally-owned lands, distinguishing between public lands and acquired lands.[1] The Act of May 27, 1947, 61 Stat. 119, dealt with revenues from public lands. It rewrote Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and directed that the Territory of Alaska, as well as the several States, was to receive a 37½% share of mineral leasing revenues from public lands within its borders.[2]

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[1] "Public lands" are lands of the public domain which have never been in state or private ownership. They are distinguished from "acquired lands", which are lands acquired by the United States from a state or citizen through purchase or grant. *See* 611 F.2d at 211, n.2.

[2] Section 2(g) of the Act of July 10, 1957, 71 Stat. 282, amended Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, to provide that the Territory of Alaska would receive an additional 52½% share of mineral lease revenues from public lands in Alaska, over and above the 37½% share granted by the 1947 amendment. This was in recognition of the fact that the Territory of Alaska was not covered by the Federal Reclamation Fund which received 52½% of revenues from mineral leases in public lands in the States. As a result of this amendment, the Territory of Alaska became entitled to 90% of all revenues derived from mineral leases on public lands in Alaska.

The Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351 *et seq.*, addressed mineral leases on federally-owned acquired lands. Section 3 of the Act, 30 U.S.C. § 352, authorized the leasing of minerals (including oil and gas) on such lands if the head of the executive department having jurisdiction over the lands consented to such leasing. Section 6 of the Act, 30 U.S.C. § 355, directed that the resultant revenues be distributed in the same manner as other revenues from the leased lands were distributed.

With respect to revenues from lands within wildlife refuges, Section 401 of the Act of June 15, 1935, 49 Stat. 378, 383, 16 U.S.C. § 715s, provided that 25% of non-mineral receipts from such lands[3] were to be distributed to the county or counties in which the refuge was situated, with the remaining 75% deposited in the United States Treasury.[4] Accordingly, under Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 355, oil and gas revenues from acquired lands in wildlife refuges also were to be distributed 25% to the counties in which the lands were located and 75% to the federal government. Oil and gas revenues from public lands in wildlife refuges, however, remained subject to distribution under the Mineral Leasing Act, 30 U.S.C. § 191: 37½% to the State within which the refuge was located, 52½% to the Federal Reclamation Fund, 10% to the federal government. As a result of the 1947 amendment to 30 U.S.C. § 191, the Territory of Alaska was entitled to 37½% of the revenues from public lands within wildlife refuges in the Territory; the 1957 amendment increased this share to 90%.

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[3] The Comptroller General of the United States ruled in 1942 that revenue from oil and gas leases on lands within wildlife refuges was not subject to distribution under 16 U.S.C. § 715s. Cong. Opinion B-24 128, 21 Comp. Gen. 873 (R. 982).

[4] With the enactment of the General Appropriation Act of 1951, 64 Stat. 595, this 75% share was made available for the management of refuges.

Section 6(k) of the Alaska Statehood Act of 1958, 72 Stat. 343, 43 U.S.C. note prec. § 21, provided that the provisions of the Statehood Act repealing portions of certain existing statutes were not to deprive the new State of Alaska of rights to revenues previously enjoyed by the Territory under the Mineral Leasing Act. Section 28(b) of the Statehood Act, 72 Stat. 351, amended Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, by changing the term "Territory" to "State" in the clause that allocated to Alaska the 52½% share of mineral revenues from public lands which otherwise would go to the Federal Reclamation Fund.

Summarizing, as of the date the State of Alaska was admitted to the Union, federal oil and gas lease revenues from lands within wildlife refuges in Alaska were to be distributed in one of two ways, depending on the nature of the lands from which the revenues were realized. If they were acquired lands, the revenues were to be distributed 25% to the county in which the lands were situated and 75% to the federal government pursuant to 30 U.S.C. § 355 and its incorporation of the 16 U.S.C. § 715s revenue distribution formula for non-mineral revenues from lands in wildlife refuges. If they were reserved public lands[5], the revenues were to be distributed 90% to the State of Alaska and 10% to the United States Treasury pursuant to 30 U.S.C. § 191.

The Kenai National Moose Range was established in 1941 when approximately two million acres of "public and nonpublic land" on the Kenai Peninsula in Alaska were withdrawn and reserved for use as a refuge and breeding ground for moose by Exec. Order No. 8979, 6 Fed. Reg. 6471 (1941). Federal oil and gas leases were first issued on the reserved public lands in the Range[6] in 1957 and 1958. R. 223, 930.[7]

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[5] "Reserved public lands" are public lands which have been set apart and reserved for a specific purpose. *See* n.1, supra.

[6] In Udall v. Tallman, 380 U.S. 1 (1965), this Court held that Exec. Order No. 8979 did not withdraw public lands in the range from federal oil and gas leasing.

[7] "R. ____" refers to the record filed in the court of appeals.

The Kenai National Moose Range is the only wildlife refuge in Alaska generating oil and gas revenues.[8] Federal Petitioners' petition at 6. Oil and gas revenues from reserved public lands in wildlife refuges in states other than Alaska are *de minimus. Id.,* n.3, and Affidavit of Lynn A. Greenwalt, Director of the United States Fish and Wildlife Service (printed as an appendix to the Federal Petitioners' brief in the court of appeals at 41-43).

The seeds of the present dispute were sown in 1964 when Congress passed Public Law 88-523, 78 Stat. 701, which amended the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, in two ways. First, separate distribution schemes were established for revenues from "reserved public lands" and those from "areas . . . acquired in fee by the United States [*i.e.,* acquired lands]." Second, without discussion in the legislative history, the word "minerals" was added to the list of revenue sources subject to distribution under the statute.

Following the 1964 amendment, the Department of the Interior continued to distribute revenues from the reserved public lands of the Kenai National Moose Range pursuant to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191. R. 297. The federal official making the decision to continue that practice was the Secretary of the Interior. R. 231.

In 1971, in Section 9(d) of the Alaska Native Claims Settlement Act of 1971, 85 Stat. 695, 43 U.S.C. § 1608(d), Congress again directed that all mineral revenues from public

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[8] In response to the State of Alaska's discovery requests, the Federal Petitioners responded that records of revenue before 1966 were "not readily available." R. 229. Between 1966 and 1976, revenues totaled approximately $57,000,000. R. 957. Since 1976, when the present suits were filed, revenues from those leases have been placed in an escrow account pending the outcome of this litigation. R. 230. That account now contains between seventeen and eighteen million dollars. Federal Petitioners' petition, pp. 5, 17-18.

lands in Alaska were to be distributed as provided in the Alaska Statehood Act (*i.e.*, pursuant to 30 U.S.C. § 191, 90% to the State of Alaska and 10% to the United States Treasury).

In 1975, eleven years after the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C § 715s, the Director of the Fish and Wildlife Service asked the Solicitor of the Department of the Interior whether the 1964 amendment to 16 U.S.C. § 715s required that oil and gas revenues from reserved public lands in wildlife refuges be distributed pursuant to that statute and not the Mineral Leasing Act of 1920, 30 U.S.C § 191; the Solicitor opined that it did. R. 179. The Comptroller General of the United States concurred in the Solicitor's opinion. 55 Comp. Gen. 117 (R. 185). In response to a request by the State of Alaska for reconsideration (R. 190), the Solicitor affirmed his earlier decision. R. 211.

Shortly thereafter, the State of Alaska sued the Secretary of the Interior, the Comptroller General, and the Secretary of the Treasury, seeking a declaration that distribution of the oil and gas revenues from the reserved public lands of the Kenai National Moose Range was governed by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C § 191, and resumption of the payments of 90% of such revenues to the state which had been suspended on the basis of Solicitor's and Comptroller General's opinions. R. 1-9. Kenai Peninsula Borough, the county-type political subdivision[9] within which the Kenai National Moose Range is located, also sued the Secretary of the Interior seeking a declaration that 16 U.S.C. § 715s controls the distribution of oil and gas revenues from the reserved public lands within the Range and for an order requiring the Secretary to pay the borough 25% of such revenues, to account for past payments made to the State of Alaska, and to recover such past payments for the borough's benefit. R. 14-23.

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[9] Alaska has no political subdivisions known as "counties." The Alaska analogue is the "borough." *See* Alaska Const., art. X, and R. 854.

At virtually the same time, Congress enacted Section 317(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2770, a comprehensive re-enactment of 30 U.S.C. § 191 which increased to 50% the share of mineral revenue from public lands received by other States and re-enacted Alaska's 90% share of such revenues.

On August 18, 1977, the district court granted summary judgment for the State of Alaska, holding that Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, controls the distribution of oil and gas revenues from the reserved public lands within the Kenai National Moose Range both before and after the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, and that the latter statute controls distribution of mineral revenues derived from acquired lands in wildlife refuges. 436 F. Supp. 288 (D. Alaska 1977). On February 5, 1980, the court of appeals affirmed the decision of the district court. 611 F.2d 1210 (9th Cir. 1980).

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, was substantially revised in 1978 when Congress enacted Section 1(a) of Public Law 95-469, 92 Stat. 1319. During deliberations on the bill, the House of Representatives proposed making it applicable to oil and gas revenues from reserved public lands, as well as acquired lands, in wildlife refuges. However, the Senate Committee on Environment and Public Works deleted that proposed amendment on the ground that it was "inappropriate to legislate on this matter pending a determination by the court." S. Rep. No. 95-1174, 95th Cong. 2d Sess., 4, reprinted in [1978] U.S. Code Cong. & Admin. News, pp. 2979, 2982.

REASONS FOR DENYING THE WRIT

1. The issue in this case is too narrow to warrant review by this Court on certiorari. As the Federal Petitioners acknowledge, the Kenai National Moose Range is the only wildlife

refuge in Alaska currently generating oil and gas revenues, and oil and gas revenues from reserved public lands in wildlife refuges in other states are *de minimus.* Federal Petitioners' petition,
p. 6 and n.3. Accordingly, the decision in this case will have no application beyond the Kenai National Moose Range and the parties to this action.

Both the Federal Petitioners and petitioner Kenai Peninsula Borough speculate that other wildlife refuges in Alaska may have significant oil and gas revenue potential. Federal Petitioners' petition, pp. 6, 18; Kenai Peninsula Borough's petition, p. 8. Accordingly, they hypothesize, the decision in this case may affect distribution of revenues which may be realized from those lands at some unspecified time in the future. *Id.* Because of that doubly speculative possibility, they urge this Court to exercise its discretion and grant review. However, such a speculative possibility does not appear to be one of the "special and important reasons" for granting review or writ of certiorari contemplated by Supreme Court Rule 19.1.

Moreover, on several occasions this Court has stated that determinations regarding the administration of public lands should be made by Congress and not by the courts. *See, e.g., Alabama v. Texas,* 347 U.S. 272, 273-274 (1954), and cases cited. Had this issue not been in litigation in the courts below, it is likely that Congress already would have resolved the matter. The question of the meaning of "minerals" in 16 U.S.C. § 715s and its application to mineral lease revenues on reserved public lands in wildlife refuges was before Congress in 1978. However, because of this litigation, Congress deferred resolution of the issue. *See* 612 F.2d at 1214 n.6.

Nor should the Court be persuaded to grant the writ on the basis that "substantial sums" (Federal Petitioners' petition, p. 17) or "significant amounts of revenue" (Kenai Peninsula Borough's petition, p. 7) are involved. The total revenue from federal oil and gas leases on the Kenai National Moose Range between 1966 and 1976 was $57 million. R. 949. Since 1976,

an additional $17-18 million have been escrowed pending this litigation. Federal Petitioners' petition, pp. 5, 17-18. These amounts should be contrasted to the amounts involved in cases such as *United States v. Zazove,* 334 U.S. 602, 613-614, (1948) ("billions of dollars"). While not insubstantial, the amounts involved in this case do not justify review by this Court.

2. The court of appeals fully considered and correctly decided the question presented. As the court of appeals noted, 612 F.2d at 1212, the parties agreed that there is an irreconcilable conflict between the revenue distribution provisions of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, and the Mineral Leasing Act of 1920, 30 U.S.C. § 191.[10] To resolve the conflict, the court of appeals undertook an exhaustive analysis of the legislative history of the 1964 amendment to 16 U.S.C § 715s in an effort to ascertain the underlying congressional intent, as it was required to do under the cases cited in its opinion at 612 F.2d at 1213. Following that exhaustive analysis, the court of appeals concluded that, although the legislative history of those amendments did not conclusively resolve the issue, the few items of legislative history which exist[11] indicate that Congress intended no change in the preexisting scheme under which mineral revenues from reserved public lands in wildlife refuges were distributed pursuant to 30 U.S.C. § 191. 612 F.2d at 1214 n.7. Given these facts, its decision affirming the district court's decision was correct and should not be disturbed.

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[10] Accordingly, the reliance of both the Federal Petitioners' petition (p. 14) and petitioner Kenai Peninsula Borough's petition (pp. 9-10) on the so-called "plain meeting rule" of statutory construction is misplaced. Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 9-10 (1976).

[11] Both the House and Senate reports on the bill stated that the 1963 payments to counties from the Kenai National Moose Range under 16 U.S.C. § 715s totalled $1,768, and would have been identical had the 1964 amendment been in effect in 1963. H.R. Rep.

(Footnote continued on following page)

3. Review of the decision below necessarily will require an exhaustive review of the legislative history of the 1964 amendment to 16 U.S.C. § 715s, a fact-finding inquiry already performed by the courts below and found by the court of appeals to be inconclusive on the issue of congressional intent. 611 F.2d 1214.[12] Further review of the legislative history by this Court is unwarranted.

4. Both the Federal Petitioners and petitioner Kenai Peninsula Borough argue that this case presents important questions of statutory construction. Federal Petitioners' petition, pp. 15-16; Kenai Peninsula Borough's petition, pp. 8-10. However, at bottom, the process of statutory construction

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(Footnote continued from preceding page)

No. 1753, 88th Cong., 2d Sess. 3 (1964) (hereafter "House Report"), R. 590, 592; S. Rep. No. 1096, 88th Cong., 2d Sess. 13 (1964) (hereafter "Senate Report"), R. 614, 626. Had Congress intended to make the oil and gas revenues from the Range subject to distribution under the amended statute, that figure would have been increased by almost $1 million, 25% of oil and gas revenues which totalled $3,813,290 in 1964 (*see* 45 of Affidavit of Lynn A. Greenwalt, Director of the United States Fish and Wildlife Service, published as an appendix to the Federal Petitioners' brief before the court of appeals at pp. 41-43. Under the amendment, although some counties would get more, "the increase [would] only be equitable and there [would] be no windfall or bonanza." Senate Report, p.3; R. 616. Had Congress intended the amendment to affect oil and gas revenues from the Range, the payments to counties from the Kenai National Moose Range (*i.e.*, to the Kenai Peninsula Borough) would have included an additional "windfall or bonanza" of $953,322 over and above the $1,768 listed in the reports. Furthermore, Congress expected that the wildlife refuge fund would decrease if the amendment was adopted. House Report, p. 12; R. 601. However, if Congress had intended the amendment to reach oil and gas revenues from the Range, the fund would have been increased by almost $3 million (75% of the $3,813,290 in 1964 revenues).

[12] Respondent State of Alaska believes that the legislative history of the 1964 amendment demonstrates beyond question that Congress intended no change in the pre-1964 practice.

(including the use of the canons of statutory construction urged by petitioners) is to ascertain the intent of Congress, which is what both the district court and the court of appeals did here.

Furthermore, canons of statutory construction not cited by petitioners support the decision reached by the court below. For example, this Court has stated that "[s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling." *Ginsberg & Sons v. Popkin,* 285 U.S. 204, 208 (1932). Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, specifically provides that the State of Alaska is to receive 90% of money received from public lands in Alaska. This distribution scheme was reaffirmed when Congress enacted Section 9(d) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1608(d), which specifically directed that all mineral revenues from public lands in Alaska were to be distributed as provided in the Alaska Statehood Act, which in turn required that they be distributed pursuant to 30 U.S.C. § 191.

In addition, Section 317(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2770, was a comprehensive re-enactment of 30 U.S.C. § 191. It increased the share of mineral revenues from public lands which all states other than Alaska were to receive from 37½% to 50%, and specifically re-enacted Alaska's 90% share of "[a]ll money received from sales, bonuses, royalties, and rentals of the public lands." This is "persuasive evidence" that Congress intended the pre-existing revenue distribution scheme to be continued. *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 275 (1974), and cases cited.

Finally, the doctrine of contemporaneous construction supports the decisions below.[13] Following the effective date of

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[13] The Federal Petitioners argued in the court of appeals that the Department of the Interior's new interpretation in 1975 is entitled to the customary deference shown to agency interpretation. However, the court of appeals properly showed less deference to the new interpretation than it gave to the contemporaneous 1964 interpretation. *See* 612 F.2d at 1214-1215 n.8.

the 1964 amendment to 16 U.S.C. § 715s, the Secretary of the Interior determined that the oil and gas revenues from the Kenai National Moose Range should be governed by 30 U.S.C. § 191 and, not by amended 16 U.S.C. § 715s. R. 231. As this Court stated in *Udall v. Tallman, supra,* at 16:

> When faced with the problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.' Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'

(Citations omitted.) The 1964 amendments to 16 U.S.C. § 715s charged the Secretary of the Interior with receiving and distributing the wildlife refuge receipts subject to that statute. He also was responsible for administering 30 U.S.C. § 191.

Moreover, a contemporaneous administrative construction "carries most weight when the adminstrators have participated in drafting and directly made known their views to Congress in committee hearings." *Zuber v. Allen,* 396 U.S. 168, 192 (1969) (citations omitted). Not only did Department of the Interior officials directly make their views on the proposed amendment to 16 U.S.C. § 715s known to Congress on several occasions, *see* R. 389, 390, 399, 410, 460, 463, 485, 487, 547, 572, 580, 602, 608, 611, 636, 637, 686, 693, 708, 735, 757, 782, 790, 794, 807, 817, and 832, they made frequent suggestions regarding possible amendments. *See* R. 390, 399, 410, 460, 487, 572, 580, 602, 637, 782, and 807.

Both the district court and the court of appeals have concluded that the Secretary's contemporaneous construction was correct, and it should not be reviewed by this court on a writ of certiorari.

5. The construction of 16 U.S.C § 715s urged by petitioners would be manifestly unfair to Alaska Natives. Under Section 9(d) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C § 1608(d), 2% of the gross revenues from "minerals in public lands in Alaska" are to be paid into the Alaska Native Fund. Between 1972, the first year payments were made to the fund, and 1976, gross Mineral Leasing Act revenues from public lands in Alaska totalled $37,237,933.20, with the fund receiving $4,332,184.39. R. 230.[14] Of those revenues, $28,369,204.84 (76%) was attributable to federal oil and gas leases in the Kenai National Moose Range. R. 957. If those revenues are not to be distributed as provided in the Alaska Statehood Act (*i.e.*, pursuant to 30 U.S.C. § 191), they would be taken out of the coverage of Section 9(d) the Alaska Native Claims Settlement Act as well, and contributions to the Alaska Native Fund would be reduced accordingly. In addition, the fund could be required to refund all moneys previously received which are attributable to Kenai National Moose Range oil and gas receipts.

6. There is an independent ground on which the decisions below must be affirmed. The 30 U.S.C § 191 distribution formula for revenues from public lands in Alaska (which include reserved public lands in wildlife refuges) is required by the Alaska Statehood Act, a solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union. Any post-statehood deviation from that scheme (such as the construction of 16 U.S.C § 715s urged by petitioners here) would impermissibly violate that compact.

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[14] The figures showing payment to the Alaska Native Fund do not equal 2% of the gross revenues shown. No explanation of this discrepancy is given.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted this _____ day of July, 1980.

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Nos. 79-1890 and 79-1904

In the Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

STATE OF ALASKA

KENAI PENINSULA BOROUGH, PETITIONER

v.

STATE OF ALASKA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

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v.

STATE OF ALASKA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

QUESTION PRESENTED

Whether revenues from federal oil and gas and other mineral leases covering withdrawn public lands

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[1] The other petitioners in No. 79-1890 are the Secretary of the Treasury and the Comptroller General.

in federal wildlife refuges in Alaska are to be distributed according to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, which allocates 25 percent of the revenues to the counties in which such lands are located and reserves 75 percent for federal purposes related to the Act, rather than according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which provides that 90 percent of such revenues be paid to the State of Alaska and 10 percent be covered into the United States Treasury.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a)[2] is reported at 612 F.2d 1210. The opinion of the district court (Pet. App. C, 15a-25a) is reported at 436 F. Supp. 288.

JURISDICTION

The judgment of the court of appeals (Pet. App. 13a-14a) was entered on February 5, 1980. On April 29, 1980, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to June 2, 1980. The petition in No. 79-1890 was filed May 30; the petition in No. 79-1904 was filed June 2; both petitions were granted on October 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s, provides in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treas-

[2] All references are to petition No. 79-1890, filed by the federal petitioners.

ury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the "system") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

(c)(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

* * * * *

(g) As used in this section—

* * * * *

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, provides in pertinent part:

> All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C. 1019], shall be paid into the Treasury of the United States; * * * of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: * * *

Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, provides in pertinent part:

> All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands * * *.

STATEMENT

The Kenai National Moose Range is part of the National Wildlife Refuge System administered by the Fish and Wildlife Service in the Department of the Interior. It was established in 1941, when Executive Order No. 8,979, 6 Fed. Reg. 6471 (1941), withdrew and reserved approximately two million acres of public land on Kenai Peninsula in Alaska for "use * * * as a refuge and breeding ground for moose." [3]

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[3] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964), enlarged the Kenai Range by approximately 40,115 acres of public land withdrawn and re-

At all times, large portions of the Range have been open to oil and gas leasing—albeit under special conditions. See *Udall* v. *Tallman*, 380 U.S. 1 (1965). Such leases were first issued in the mid 1950's (*id.* at 7-16) and continue in effect to this day. Substantial revenues from rents, royalties and bonuses have resulted,[4] and the question presented here is how these monies should be apportioned between the federal government and either the State of Alaska or the Borough of Kenai.

1. Before 1964, revenues generated from lands in federal wildlife refuges were arguably subject to

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served "from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws."

[4] Payments totalling some $57 million were received between 1966 and 1976 (J.A. 66). ("J.A." refers to the printed appendix in this Court; "R." refers to the Clerk's Record filed in the court of appeals.) Since 1976, when the present suits were filed, funds representing a 90 percent share of the oil and gas leasing revenues have been placed in an escrow account pending the outcome of this litigation (see J.A. 27). We are advised by the Department of the Interior that the account now contains more than $23 million, including small sums from other reserved refuge lands. In addition, we are advised by the United States Geological Survey that, while the Kenai Range is, at present, the only refuge in Alaska generating oil and gas revenues, substantial volumes of recoverable oil and gas are believed to underlie several of the 17 other existing wildlife refuges in Alaska, including those recently withdrawn by the Secretary of the Interior on February 12, 1980, 45 Fed. Reg. 9562. The most notable of these is the Arctic National Wildlife Range established in 1960 (25 Fed. Reg. 12598) (1960) (renamed the William O. Douglas Arctic Wildlife Range by Pres. Proc. No. 4729 (Feb. 29, 1980), 16 Weekly Comp. of Pres. Doc. 419-420 (Mar. 3, 1980)), in Northeast Alaska. See generally B. Miller, *et al.*, Geological Survey Circular 725, *Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States* 4-5, 16-17, 24-25, 33 (1975).

distribution under one or more of at least three statutes. The first was Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383 (now codified at 16 U.S.C. (Supp. II) 715s), which allocated to affected counties 25 percent of receipts from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel and from other privileges on refuges." After 1950, any remaining funds were to be used by the Secretary of the Interior for management of the refuges. 64 Stat. 693-694.[5] The quoted provision of the 1935 Act governed revenues from all refuge lands administered by the Fish and Wildlife Service, whether withdrawn from the public domain or later acquired by the United States.[6] But it is not clear whether oil and gas lease receipts were included within the distribution scheme of the statute. See pages 24-31, *infra.*

So far as wildlife refuges were made up of acquired lands, that issue was mooted in 1947 by the passage of the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, ch. 513, 61 Stat. 913, now codified at 30 U.S.C. 351 *et seq.*). Section 3

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[5] Under subsequent amendments to the Act, any net receipts in excess of the amount required for distribution under the Act, are to be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the Migratory Bird Conservation Act. Pub. L. No. 95-469, Section 1(a)(3), 92 Stat. 1319, 16 U.S.C. (Supp. II) 715s(e).

[6] In general, "acquired lands" are those granted or sold to the United States by a state or citizen, while "public domain lands" are those which were never in state or private ownership. See *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2 (1966). Hereinafter, we use the terms "public domain" and "public lands" interchangeably, and speak of "withdrawn" or "reserved" lands to denote areas of the public domain dedicated to refuge or other special purposes.

of the statute, 30 U.S.C. 352, authorized leasing of specified minerals, including oil and gas, on lands acquired by the United States, and Section 6, 30 U.S.C. 355, provided that such leasing revenues "be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." In the case of federal wildlife refuges, this meant that the revenues were apportioned between counties and the federal government in accordance with the formula of the 1935 Act.

Oil and gas leasing revenues generated on refuges withdrawn from the public domain were arguably subject to distribution under the provisions of Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191,[7] which, since 1957, allocates 90 percent of included receipts to the State of Alaska.[8] Although

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[7] The Mineral Leasing Act covers the disposition of revenues generated from coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock, and gas. 30 U.S.C. 181.

[8] The Act of May 27, 1947, ch. 83, 61 Stat. 119, amended the Mineral Leasing Act to provide that 37½ percent of the revenues received from sales, bonuses, royalties, and rentals of public lands in the Territory of Alaska be distributed to the Territory for the construction and maintenance of public schools or other public educational institutions. In 1957, the Mineral Leasing Act was again amended to provide for an additional 52½ percent to be paid to the Territory of Alaska for disposition by the legislature of the Territory. Pub. L. No. 85-88, Section 2, 71 Stat. 282. That formula was retained when Alaska became a State in 1959. See Sections 6(k) and 28(b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 343, 351.

States other than Alaska at that time received only a 37½ percent share of mineral leasing revenues on reserved public land within their borders, the remaining 52½ percent share going to the Federal Reclamation Fund. Amendments to the Mineral Leasing Act in 1976 raised the share of these other states to 50 percent. Pub. L. No. 94-579, 90 Stat. 2770-2771.

this is far from clear as a matter of law (see pages 22-31, *infra*), it is a fact that oil and gas lease revenues from the Kenai Range, covering reserved lands, were distributed under the Mineral Leasing Act of 1920—90 percent being paid to the State.

2. In 1964, Congress amended the Wildlife Refuge Revenue Sharing Act in several respects. Pub. L. No. 88-523, 78 Stat. 701-702. One change was the addition of the term "minerals" to the list of sources for refuge revenues that are to be distributed according to the allocation provisions of the statute. Section 401(a), 78 Stat. 701, 16 U.S.C. 715s(a). There were also added new provisions differentiating, with respect to the formula for payments to counties, between acquired lands and reserved public lands. However, the rule that counties would receive 25 percent of revenues from reserved lands within refuges was retained. Section 401(c)(1), 78 Stat. 701.[9]

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[9] Under the 1964 amendment, an additional payment option was provided with respect to acquired lands. Section 401(c)(2), 78 Stat. 701. Counties whose borders enclosed wildlife refuge land acquired by the United States in fee were to receive "three-fourths of 1 per centum of the cost of the areas * * *" or 25 percent of resource revenues collected from the lands, whichever was greater. In 1978, this provision was further amended to include a third option. Now a county may take 75 cents per acre of refuge land located within the county or either of the above options, whichever is greater. Pub. L. No. 95-469, 92 Stat. 1319, 16 U.S.C. (Supp. II) 715s(c)(1)(A). The amendments did not change the distribution formula for reserved lands in wildlife refuges. The 1978 amendments, however, included reserved lands within the benefits of the Payment In Lieu of Taxes Act, Pub. L. No. 94-565, 90 Stat. 2662, 31 U.S.C. 1601 *et seq.* See 16 U.S.C. (Supp. II) 715s(h). Under this statute, counties embracing reserved refuge lands are entitled, in addition to the amount received under the Wildlife Refuge Revenue Shar-

Notwithstanding the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, the Department of the Interior continued, until 1975, to distribute oil and gas lease revenues from the Kenai Range under Section 35 of the 1920 Act—90 percent to Alaska and 10 percent to the General Fund of the Treasury (J.A. 59).[10]

In 1975, the Director of the Fish and Wildlife Service, who is responsible for administration of the National Wildlife Refuge System, including the Kenai Range inquired of the Solicitor of the Interior Department whether the 1964 amendment to 16 U.S.C. 715s changed the requirements of the Mineral Leasing Act "as to receipts from oil and gas leases on refuges created by withdrawals of public lands" (Pet. App. 26a). The Solicitor responded that the 1964 amendment "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act as to the treatment of oil and gas revenues from reserved public land within the National Wildlife Refuge System; and he concluded that the more recent statute governs (*id.* at 26a-33a).

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ing Act, to 75 cents per acre of reserved lands less receipts received under the Refuge Act, or 10 cents per acre of reserved lands, whichever is greater. 31 U.S.C. 1602, 1604.

[10] After enactment on December 18, 1971, of Section 9(d) of the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 695, 43 U.S.C. 1608(d), the computation of the State (90 percent) and federal (10 percent) shares was made on net revenues after the deduction of the amount (2 percent of gross royalties) paid into the Alaska Native the Alaska Native Fund. The fund was fully paid as of June Fund. No party has disputed the 2 percent distribution to 30, 1980. Appendix B, *infra*.

The Solicitor then asked the Comptroller General whether he agreed. The Comptroller General issued a concurring decision on July 29, 1975 (55 Comp. Gen. 117; Pet. App. 34a-41a). The State of Alaska objected and requested reconsideration. On June 11, 1976, the Comptroller General, after reviewing a second memorandum from the Solicitor which reached the same conclusion as the first, as well as another objection by the State, affirmed his original decision (Pet. App. 42a-58a).

3. In 1976, Kenai Peninsula Borough, a political subdivision of Alaska and a "county" for the purposes of the Wildlife Refuge Revenue Sharing Act (see 16 U.S.C. (Supp. II) 715s(g)(5)), sued the Secretary of the Interior seeking a declaration that 16 U.S.C. 715s controlled the distribution of oil and gas revenues on reserved public land within the Kenai Range, and an order requiring the Secretary to pay the Borough 25 percent of such revenues, to account for past payments of such revenues made to the State of Alaska, and to recover such past payments for Kenai's benefit (J.A. 16-24). Immediately thereafter, the State of Alaska sued the Secretary of the Interior, the Comptroller General, and the Secretary of the Treasury seeking a declaration that distribution of oil and gas revenues on reserved public land within the National Wildlife Refuge System was at all times governed by Section 35 of the Mineral Leasing Act (J.A. 8-15). The State also sought a resumption of the 90 percent payments out of such revenues to the State, and the invalidation of the two decisions of the Comptroller General as "of no legal effect" (J.A. 14). The district court ordered consolidation of the two lawsuits (J.A. 25-26).[11]

[11] After obtaining leave of court (J.A. 35), Kenai intervened as a defendant in the consolidated cases (see J.A. 36-49).

On August 17, 1977, the district court granted summary judgment to the State of Alaska, holding that Section 35 of the Mineral Leasing Act controlled the distribution of oil and gas revenues from reserved public land within the Kenai Range both before and after the 1964 amendment to 16 U.S.C. 715s, and that the Wildlife Refuge Revenue Sharing Act governed distribution of only those "mineral" revenues derived from acquired refuge lands (Pet. App. 15a-25a).

The court of appeals affirmed, concluding that the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act "must be read to apply only to acquired refuge lands and not to reserved refuge lands" (Pet. App. 11a). In reaching this result, the court acknowledged that the plain meaning of the language of the statute "fairly brings the Kenai Moose Range oil and gas revenues within its scope" (*id.* at 7a), but it concluded that application of the plain meaning rule was inappropriate in the circumstances of this case, where it would produce a conflict with another statute, the Mineral Leasing Act. In the absence of any indication in the legislative history of the 1964 amendments to 16 U.S.C. 715s that Congress intended to repeal any part of the Mineral Leasing Act, the court declined to find what it termed a repeal by implication (Pet. App. 7a-12a).[12] In addition, the court stated, without dis-

[12] As the court of appeals noted (Pet. App. 10a n.6), 16 U.S.C. 715s underwent another major revision in 1978, in the course of which the House proposed amending subsection (a) so as to ensure that the statute would be construed, at least in the future, as applying to oil and gas revenues from reserved lands, as well as from acquired lands. H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 1, 8 (1978). That clarifying provision was, however, removed by the Senate Committee on Environment and Public Works, which decided to leave

cussion, that this interpretation would avoid "other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act" (*id.* at 11a). The court also drew support for its conclusion from the Interior Department's adherence to the Mineral Leasing Act formula up to 1975 in disbursing revenue to the State from the oil and gas leases in the Kenai Range (*id.* at 11a-12a).

SUMMARY OF ARGUMENT

A.

The only question presented is whether the Wildlife Refuge Revenue Sharing Act, as amended in 1964, governs the distribution of federal revenues from oil and gas leases covering areas of the public domain withdrawn for refuge purposes. On the face of the text, as both courts below recognized, the answer is a clear affirmative. In our submission, this is an occasion for applying the "plain meaning" rule of statutory construction.

Assuming the 1964 statute changed the law in this respect, it is unfortunate that Congress did not expressly indicate an intent to repeal or amend. But, given the unambiguous language of the new provision, specific in its coverage and wholly reasonable in its effect, we submit that the legislative branch must be taken at its word. In our view, there is no reason to go beyond the text.

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the statute in essentially the same form. The Committee explained that it was "inappropriate to legislate on this matter pending a determination by the court, and [that the Committee] takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, 8 (1978).

B.

The legislative history of the 1964 amendment is inconclusive. Because the prime focus was on increasing, and making more equitable, the distribution of refuge revenues to counties where acquired lands were involved, it is not entirely surprising to find no express recognition that the revised statute would also affect payments from areas withdrawn from the public domain. On the other hand, there is some basis for supposing that Congress believed it was making no change in this respect. What is tolerably clear, however, is that oil and gas revenue from *all* refuges were intended henceforth to be subject to the amended Wildlife Refuge Revenue Sharing Act. If this is so, it cannot matter whether Congress thought it was enacting a new rule for "public land" refuges, or confirming the previous law, or resolving an existing doubt.

There is, indeed, substantial indication that the administrators of the refuge system then read a statute of 1935—unquestionably applicable to all refuges under the primary jurisdiction of the Fish and Wildlife Service—as encompassing oil and gas lease revenues, and requiring allocation of 25 percent to affected counties. So believing, they appear to have conveyed that opinion to the relevant Committees of both Houses during the hearings that preceded the 1964 amendment. Whether or not this was a correct view of the law is not dispositive. It seems probable that Congress acted on that premise. But, in any event, there is no basis for doubting that the amendment means what it says.

To be sure, the actual practice of the Department of the Interior did not consistently follow the law as some of its senior officials apparently understood it. And, in the case of the Kenai Range, the 1964 amend-

ment was ignored for a decade. Yet, when the matter received careful and thorough consideration, the Department unambiguously voiced its view and was sustained on full re-examination by the Comptroller General. In our submission, those final administrative rulings are entitled to confirmation by this Court.

C.

The suggestion that our reading of the 1964 amendment of the Wildlife Refuge Revenue Sharing Act creates a conflict with the Alaska Statehood Act and the Alaska Native Claims Settlement Act is without substance. At best, the provisions invoked merely grant the State or the Natives a specified share of revenues distributed pursuant to the Mineral Leasing Act of 1920. Nothing prevented Congress from removing wildlife refuge oil and gas revenues from that distribution scheme—assuming they were within it before 1964.

ARGUMENT

Very seldom is this Court called upon to construe a statutory text so unambiguous on its face that resort to extraneous materials is unnecessary. This, we submit, is that rare case. Accordingly, we urge the Court to apply here "the admittedly old-fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." *United States* v. *Clarke*, No. 78-1693 (March 18, 1980), slip op. 1. If we go beyond the words of the statute, it is only out of an abundance of caution and without suggesting the necessity—or even the propriety—of such excursions.

A. THE PLAIN MEANING OF THE STATUTORY TEXT AND OTHER CANONS OF CONSTRUCTION

1. The controlling statutory text is not in the least ambiguous. As amended in 1964, the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s,[13] expressly directs that, henceforth, "all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel" within federal wildlife refuges administered by the Fish and Wildlife Service shall be "reserved in a separate fund for disposition as hereafter prescribed" (Section 715s (a)). And the statute goes on to specify that, at the end of each fiscal year, a portion of these revenues shall be distributed to the counties embraced by the refuge, a flat 25 per cent of net receipts in the case of "any reserve area" (Section 715s(c)(2)), expressly defined as "land withdrawn from the public domain" for wildlife refuge purposes (Section 715s(g)(3)). Alternative formulae, potentially more generous, are specified for counties embraced within refuges created out of "fee areas" (Section 715s(c)(1)), defined as lands "acquired in fee by the United States" (Section 715s(g)(2)). It is further provided that any net receipts remaining after these payments to counties "shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges" (Section 715s(e)). No distinction is drawn between mineral revenues and receipts from other natural resources.

So far as the statutory text controls, there is no room for argument: receipts from mineral leases, like

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[13] We quote the current provisions, as last amended in 1978. Although the subsections have been somewhat rearranged and various changes have been made, it is not suggested that any of the amendments after 1964 affects the issue presented here. For the changes, see notes following 16 U.S.C. (1976 ed.) 715s(g) and 16 U.S.C. (Supp. II) 715s(h).

all other revenues generated within wildlife refuges, whether made up of "reserved" lands or "acquired" lands, are to be apportioned between the counties and the federal Migratory Bird Conservation Fund—no part going to the State. There is simply no way of singling out mineral revenues derived from refuges comprised of withdrawn public lands and exempting these from the scheme of the Wildlife Refuge Revenue Sharing Act. Indeed, the district court below concluded that "there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word 'minerals' " and that "a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands" (Pet. App. 21a). And the court of appeals likewise recognized that "under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope" (Pet. App. 7a).

2. Once it is clear that the enactment compels a given result, only very unusual circumstances can justify a court in holding that Congress did not really *mean* what it *said*. One does not lightly assume a slip of the legislative pen. Certainly, it is not enough to notice that the Legislature did not explain itself: it is not required to do so. Nor will it suffice to point out that a "literal" reading of the statute works a change in the law: that is what legislation is usually intended to do. Indeed, if possible, we must *prefer* a construction that does not render the text pointless.

Of course, when literalism would produce a nonsensical result, which it would be insulting to attribute to the legislative branch, the courts will strain to avoid it. But there can be no such suggestion here. Plainly, there is nothing unnatural, or even odd,

about a scheme of revenue sharing that returns a portion to the immediately affected locality, rather than to the State at large, and that applies the same distribution formula to mineral receipts as to revenues from other refuge resources.

Nor is it possible, in this instance, to say that the new statute serves a quite sufficient end without stretching it to the limits of its language. The fact is that the addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act in 1964 accomplished precisely nothing if it reaches only leases of acquired lands. Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, had long since ordained that revenues from mineral leases of acquired lands "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." Hence, any sharing formula established for wildlife refuges encompassing acquired lands would automatically attach to mineral revenues, as well as revenues from the resources specified in the Refuge Act. There was no arguable ambiguity on that score, and, therefore, no useful purpose to be served—not even clarification—in stipulating once again how mineral revenues from acquired lands within wildlife refuges would be distributed. Thus, to explain the 1964 amendment to the Wildlife Refuge Revenue Sharing Act—insofar as it added minerals to the list of revenue sources governed by the special distribution formula—as reaching only acquired lands, is to say that Congress was engaged in a wholly superfluous action.

3. What, then, is the justification for not giving the text its plain meaning? It is said that the straightforward reading of the Wildlife Refuge Revenue Sharing Act, as it affects mineral leases on refuges made

up of reserved lands, would produce an "irreconcilable conflict" with an earlier statute, which was not expressly repealed. The reference is to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which directs the payment directly to the State of a share—in the case of Alaska 90 percent—of certain mineral revenues received from "public lands." The courts below found "no clear foundation for an implied repeal" of that provision so far as it governs distribution of mineral revenues from refuge lands (Pet. App. 10a-11a, 25a). In our view, this was a wholly insufficient basis for ignoring the plain mandate of Congress.

Of course, "repeals by implication are not favored." *Morton* v. *Mancari*, 417 U.S. 535, 549 (1974), quoting *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936). But that sound canon is of doubtful force when a specific statute, far from wholly "repealing" the general law, merely carves out a very limited exception. Let us suppose, for instance, that the chronology considered in *Morton* v. *Mancari* had been reversed: that the Indian Preference law had been enacted some years *after* the general ban against governmental discrimination in employment. Even in the absence of any reference to the general law in the text or legislative history of the Indian Preference statute, there surely would have been no hesitation in applying the latter provision as written. That would be compelled on the obvious ground that the Indian law was a specific, more recent, declaration of the legislative will that created a special rule.

When the text of a new statute, dealing with a discrete subject, is unambiguous, it must be given effect even if it unquestionably alters the previous law in one respect. In our submission, that principle governs here and there is no occasion to go further.

B. THE LEGISLATIVE HISTORY AND ADMINISTRATIVE CONSTRUCTION: CHANGE OF LAW OR CLARIFICATION OF PREVIOUS AMBIGUITY?

It is nevertheless insisted that we should examine the legislative history of the 1964 amendment to determine whether Congress really intended to change the law. If we do so, however, the search proves inconclusive. As the court of appeals rightly said, "the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here" (Pet. App. 8a). But, contrary to what the courts below suggested (Pet. App. 9a & n.5, 11a n.7, 23a-24a), the few indications there are do not all point in one direction.

1. The district court relied primarily on the fact that, in a statistical chart comparing actual revenues from refuges received by counties in 1963 and those estimated in consequence of the proposed amendment, the Department of the Interior indicated no change in the amounts from the Kenai Range, made up entirely of reserved lands. Yet, if 25 percent of mineral revenues from such lands were, in future, to be distributed to the affected county—rather than 90 percent to the State, as was then presumably the rule—an increase should have been shown in this instance. See Pet. App. 23a-24a. The point is well taken.[14] It is, however, a wholly inadequate basis to

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[14] Not so the district court's other argument from the legislative history: That Congress believed the retained share of refuge revenues would decrease under the amendment, whereas it would increase if henceforth 75 percent, rather than 52½ percent (or 10 percent in the case of Alaska), of mineral revenues from reserved public lands were to be retained (Pet. App. 24a). As of 1963, considering the relatively small revenues from this source, it was not improbable

make "a jump to conclude * * * that Congress positively intended no change," as the court of appeals recognized (Pet. App. 9a n.5). The primary purpose of the 1964 amendments was to improve the distribution scheme for revenues from *acquired* refuge land (see Pet. App. 8a, 22a),[15] and it would not be surprising if the legislators overlooked, in an exhibit of many pages, a single disparity in one entry relating to a wholly separate matter.[16]

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that the effect of the more generous formula for acquired lands would be to produce a net diminution of the overall federal share of refuge revenues.

[15] The chief impetus for the 1964 amendments was the need to assure adequate payments to counties in which the United States was seeking to acquire lands for wildlife refuges—in particular wetlands—since, under the Wetlands Act of 1961, Pub. L. No. 87-383, 75 Stat. 813, the governor of a state or an appropriate state agency could veto acquisitions effected under that statute. S. Rep. No. 1096, 88th Cong., 2d Sess. 5 (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2 (1964). Therefore the greatest part of the comments on the proposed bills focused on the provisions for assuring payments to counties in which land acquired for refuges would produce little, if any, revenues.

[16] Indeed, even if one assumes they focussed on the statistical tables insofar as they reflected the effect of the proposed amendment on the payments to counties from *reserved* lands, it may be doubted whether the Members of the Senate and House Committee relied on the chart invoked by the district court, submitted in 1964. As we notice in a moment, the addition of the word "minerals" to 16 U.S.C. 715s had been adopted in 1962, when the comparable statistical table specifically avoided any indication of the anticipated payments to counties from "public land" areas under the proposed amendment. See S. Rep. No. 1919, 87th Cong., 2d Sess. 10 & nn.1 and 2 (1962) (R. 407).

For the same reason, no reliable inference can be drawn from Congressional silence on the effect of adding the word "minerals" to the resources subject to the Wildlife Refuge Revenue Sharing Act. The focus was elsewhere, and, except in Alaska, the practical consequences would be minimal.[17] On the other hand, it is wholly unlikely that the addition of mineral revenues as governed by the Act passed unnoticed. Whether or not the monetary *consequences* were fully appreciated, it is tolerably clear that the textual change was knowingly made.

This was not a last-minute "technical" amendment. The suggestion of inserting the word "minerals" in the opening paragraph of 16 U.S.C. 715s was put forward in mid-1962, when the Department of the Interior submitted a substitute bill for those then pending before the House and Senate.[18] Although the proposal was not highlighted,[19] it could hardly

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[17] In fiscal 1964, the total revenues from oil and gas leases of reserved lands within wildlife refuges in the "lower 48" States was $3,143, and the total from that source during the ten-year period 1966-1975 was only $48,182.58. Affidavit of Lynn A. Greenwalt, Director of the U.S. Fish and Wildlife Service 2-3, in Brief for the Federal Appellants in the court of appeals at 41-43, reproduced as Appendix A to the present brief, *infra*.

[18] Report of the Department of the Interior dated June 20, 1962, in S. Rep. No. 1919, *supra*, at 13, 15 (R. 410, 412); Report of the Department of the Interior of June 22, 1962, in *Authorize Increased Payments to Counties for Wildlife Refuges: Hearings on H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143 and H.R. 12144 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 87th Cong., 2d Sess. 7, 9 (1962) (hereinafter "1962 House Hearings") (R. 487, 489).

[19] The change was presumably encompassed in the statement that "our draft contains various perfecting * * * pro-

have escaped notice. Not only was the change located in the very first sentence of the proferred new text, but it was combined with a longer addition for revenues "from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes of particular areas of that System." Later the same year, the relevant Committees of both the Senate and the House adopted the suggested new language,[20] and that text was before the Congress for the ensuing two years.[21] In these circumstances, it would be bold to assert that the amendment was somehow inadvertent.

The upshot is that the legislative history of the 1964 Wildlife Refuge Revenue Sharing Act cannot be invoked to demonstrate that Congress did not mean what it said when it unambiguously subjected mineral revenues from *all* refuges administered by the Fish and Wildlife Service to a distribution scheme for the benefit of counties, rather than States. There is, accordingly, no pretext for avoiding the plain words of the text, settled in 1962 and enacted in 1964, according to which 25 percent of oil and gas lease revenues from reserved wildlife refuge lands are payable to the affected counties and the balance goes into the special conservation fund. If the consequence is at odds with legislative expectations, Congress remains free to revise the statute—something it has thus far declined to do.[22]

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visions." S. Rep. No. 1919, *supra*, at 2 (R. 399); H.R. Rep. No. 2499, 87th Cong., 2d Sess. 4 (1962) (R. 390).

[20] S. Rep. No. 1919, *supra*, at 19 (R. 416); H.R. Rep. No. 2499, *supra*, at 9 (R. 395).

[21] See S. Rep. No. 1096, 88th Cong., 2d Sess. 31 (1964) (R. 644); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 22 (1964) (R. 611).

[22] See Pet. App. 9a-10a n.6; Statement, *supra*, pages 10-11 n.12.

2. Given the plain meaning of the statute and the absence of any sufficient basis for supposing a legislative lapse, it cannot matter whether Congress appreciated that it was ordaining a new distribution formula for mineral revenues from reserved refuge lands. But, as it happens, there is reason to question whether any change of law was involved, or at least, cause to suggest that the Congress of 1964 may have believed it was merely clarifying a pre-existing doubt. If that is so, it is hardly surprising that the express inclusion of minerals among the revenue sources subject to the sharing scheme provoked no comment.

The major premise of the decisions below is that, before 1964, oil and gas leases covering wildlife refuges made up of lands withdrawn from the public domain were in all respects governed by the Mineral Leasing Act of 1920, including its revenue sharing formula, which, in the case of Alaska, required payment of 90 percent of the net receipts to the State. 30 U.S.C. 191. But that is perhaps not a correct assumption, and, more importantly, was probably not the understanding of the 1964 Congress. More likely, the accepted view was that the operative statute was the special Wildlife Refuge Act of 1935, already providing for payment of 25 percent of net revenues to the affected counties.

3. At the outset, it is not entirely clear that the Mineral Leasing Act of 1920 was ever meant to embrace lands withdrawn for wildlife refuges. Given the vagueness of the terms employed, the exact scope of that statute has been much debated since its enactment. Thus, Section 1 of the Act, 41 Stat. 437-438, now 30 U.S.C. 181, as originally enacted, embraced all "lands * * * owned by the United States" containing specified minerals, "including those in na-

tional forests, but excluding lands acquired under * * * the Appalachian Forest Act [or Weeks Act] * * * and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes." On this language, it was open to argue that the Act—including the distribution formula in Section 35, 41 Stat. 450, now 30 U.S.C. 191—applied to "acquired lands" of the United States, to lands within Indian Reservations held in trust by the United States, and to submerged lands offshore. Yet, it was early decided that the 1920 Act should be deemed to govern only "public lands," excluding all three of these categories.[23] And Congress acted on that assumption when it later enacted special laws governing mineral leasing of Indian lands, acquired lands and offshore submerged lands, without purporting to amend the 1920 Act.[24]

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[23] See Op. Solic. Interior Dep't A-2592 (Feb. 12, 1924) and 34 Op. Att'y Gen. 171 (May 12, 1924) with respect to lands within Indian Reservations established by Executive Order; 50 Pub. Lands Dec. 308, 315 (Mar. 12 and 21, 1924) and 40 Op. Att'y Gen. 9 (Jan. 3, 1941) with respect to acquired lands; Op. Solic. Interior Dep't M-34985 (Aug. 8, 1947) and 40 Op. Att'y Gen. 540 (Aug. 29, 1947) with respect to offshore submerged lands.

[24] Thus, the three subsequent general statutes dealing with mineral leases of Indian lands do not refer to the Mineral Leasing Act of 1920. Act of May 29, 1924, ch. 210, 43 Stat. 244, 25 U.S.C. 398; Act of March 3, 1927, ch. 299, 44 Stat. 1347, 25 U.S.C. 398a-398c; Act of May 11, 1938, ch. 198, 52 Stat. 347, 25 U.S.C. 396a-396g. So, also, the Outer Continental Shelf Lands Act of August 7, 1953, ch. 345, 67 Stat. 462, 43 U.S.C. 1331-1343, makes no mention of the 1920 Act. To be sure, the Mineral Leasing Act for Acquired Lands of August 7, 1947, ch. 513, 61 Stat. 913, 30 U.S.C. 351-359, explicitly refers to the earlier statute. See Section 2, 30 U.S.C. 351. But there is no repeal or amendment: the new law only

It is at least arguable that a like approach should be followed with respect to mineral leasing within wildlife refuges. Indeed, the rationale of the Opinions of Attorneys General Stone and Jackson, confining the Mineral Leasing Act of 1920 to open "public domain" lands—as the preamble of the statute suggests (41 Stat. 437)—and thereby excluding from its coverage both acquired lands and lands withdrawn for a special purpose, would seem to apply to wildlife refuges, whether created from lands purchased or areas segregated from the "public lands." See 34 Op. Att'y Gen. at 171-175; 40 Op. Att'y Gen. at 10-14. See, also, *Justheim* v. *McKay*, 123 F. Supp. 560, 564-565 (D.D.C. 1954), aff'd, 229 F.2d 29 (D.C. Cir. 1956). The failure specifically to focus on wildlife refuges is easily explained when one remembers how relatively few such reserves then existed and how remote was the prospect of mineral exploration there.[25]

If this is right, areas withdrawn from the public domain for wildlife purposes would automatically be excluded from the distribution formula of the 1920 Act. Instead, the matter would be governed entirely by Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383, which provided a distribution scheme for refuge revenues "from the sale or

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reaches acquired lands to "which the 'mineral leasing laws' [defined as including the 1920 Act] have not been extended." *Ibid.*

[25] Of the 576 areas today that are part of the National Wildlife System, only about 35 pre-date the 1920 Act, and most of them are very small reserves. No oil and gas leases were granted affecting any refuge until 1947. The only apparent exception involves five leases within the Hewitt Lake Refuge in Montana, but these were granted long before the land was withdrawn in 1938. See H.R. Rep. No. 1941, 84th Cong., 2d Sess. 2, 5, 14-19, 21 (1956).

other disposition" of natural resources and receipts "from other privileges," and impliedly conferred or confirmed authority to make such arrangements.[26] Although oil and gas leases are not mentioned, it is clear that this provision was intended to give the administering agency—then the Department of Agriculture—broad power to make "disposition of surplus animals and products on these reservations or refuges upon such terms and conditions as [it] shall determine to be for the best interests of the Government." H.R. Rep. No. 886, 74th Cong., 1st Sess. 3 (1935). See, also, S. Rep. No. 822, 74th Cong., 1st Sess. 3 (1935). By 1946, the Department of the Interior—since 1939 the custodian of such refuges[27]—had formally ruled that oil and gas leases could be granted on wildlife refuge lands under the 1935 Act. Op. Solic. Interior Dep't M. 34516 (Felix Cohen, Aug. 5, 1946) (J.A. 68-72).[28] And that view appar-

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[26] In relevant part, the Section provided:

> That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, administered by the Bureau of Biological Survey of the United States Department of Agriculture, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated. * * *

[27] See Reorg. Plan No. 2 of 1939, Section 4(e)-(f), 4 Fed. Reg. 2731 (1939).

[28] The ruling expressly dealt with acquired lands, which, as the Solicitor recognized, could not be leased under the Mineral Leasing Act of 1920, and had not yet been dealt

ently prevailed for at least the next decade,[29] with seeming congressional endorsement.[30]

4. It may well be that, in 1964, Congress acted on this understanding that the Mineral Leasing Act

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with by the Mineral Leasing Act for Acquired Lands, passed a year later. But it is clear that Section 401 of the 1935 Act made no distinction between refuges made up of reserved public lands and those established out of acquired private or State lands. If it authorized mineral leasing on any wildlife refuges, it did so for all—and mandated the same revenue sharing formula for all refuges.

[29] The Chief Counsel of the Fish and Wildlife Service so advised in a Memorandum of July 6, 1951 (J.A. 87-91). So did the Administrative Assistant Secretary of the Interior in a letter of August 14, 1951, seeking the opinion of the Comptroller General (J.A. 73-81). In the course of hearings in 1956 on bills that would have prohibited oil and gas development within wildlife refuges, counsel for the Fish and Wildlife Service asserted that "[u]nder this authorization [the 1935 Act], the Secretary of the Interior could and did issue oil and gas leases." He went on to explain: "This authorization is not a substitute for the authorizations contained in the Mineral Leasing Act, but is applicable in those instances where the Mineral Leasing Act is not applicable, namely, where withdrawals of public domain included mineral entry and leasing and on acquired lands." *Wildlife Refuge Disposal Policy: Hearings on H.R. 5306, H.R. 6723 and H.R. 8839 Before the House Comm. on Merchant Marine and Fisheries*, 84th Cong., 2d Sess. 137 (1956) (hereinafter "1956 Hearings").

[30] In 1956, the House Committee on Merchant Marine and Fisheries, after full hearings, summarized the legal position in these words: "Under the law there are, generally speaking, three types of outside interests which may be granted in lands administered through the Fish and Wildlife Service. * * * The third [type] embraces the grant of privileges (typified by oil and gas leasing) for commercial use * * *." H.R. Rep. No. 1941, 84th Cong., 2d Sess. 3-4 (1956). Presumably, the reference is to Section 401 of the 1935 Act, *supra*.

of 1920 was wholly inapplicable to wildlife refuges. Perhaps more likely, however, is the alternative view that, although the 1920 Act authorized oil and gas leases of reserved acreage on refuges and governed those activities in all other respects, the 1935 Act, since its enactment, had dictated the apportionment of revenues from such leases. That is more consistent with this Court's ruling in *Udall* v. *Tallman*, 380 U.S. 1, 4 & n.3 (1935),[31] and would sufficiently explain the absence of any express recognition that the 1964 amendment to the Wildlife Refuge Revenue Sharing Act was changing the distribution formula for mineral revenues from reserved lands.

There is, indeed, some evidence that Congress was told, and apparently accepted the proposition, that the 1935 Act already apportioned 25 percent of oil and gas lease revenues to the affected counties embracing reserved refuge lands. Thus, in 1956, in a public circular, which was submitted to Congress, the Fish and Wildlife Service stated that the "privileges" authorized to be granted on wildlife refuges by the 1935 Act "include oil and gas leasing." 1956 Hearings,

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[31] The statement in *Tallman* to the effect that the 1920 Act authorized oil and gas leasing on the Kenai Moose Range, withdrawn from the public domain in 1941, who wholly unnecessary to the only issue before the Court: whether and when, as a matter of *Executive* decision, the refuge had been opened to leasing. Nothing turned upon whether it was the 1920 Act or the 1935 Act that empowered the Secretary to grant mineral leases. Nevertheless, the premise accepted by all parties and by the Court was that the 1920 Act controlled, and it may be supposed that such a widely shared view was also indulged by Congress at the same period. On the other hand, *Tallman* did not remotely address the question whether the revenues received by the United States ought to be distributed in accordance with 30 U.S.C. 191 or 16 U.S.C. 715s.

supra, at 271 (R. 932). Within the Department of the Interior, that opinion apparently still prevailed in 1964, witness the advice given the Secretary by his senior staff that the pending amendment would have no effect on refuges made up of "public lands" because "25 percent of revenues" from such areas, "including timber and mineral receipts," would continue to be paid to the affected counties, "as under present law" (J.A. 92).[32] It would be natural if that view of the existing scheme communicated itself to the Congress during the 1962, 1963 and 1964 hearings, even if only by inference.

Thus, the Interior Department repeatedly stated that "[w]ith minor exceptions, receipts collected from both reserved public lands and acquired lands in the refuge system are subject to the provisions of section 401 of the 1935 act," and that representation was

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[32] The Interior Department memorandum, dated February 20, 1964, was commenting on the recommendations submitted two days earlier to both the Senate and House Committees by county government representatives, specifically urging an express provision in the legislation to the effect that "[m]ineral receipts * * *, whether from reserved lands or acquired lands, should be shared on the present 25-percent basis with the counties in the particular area of the [wildlife refuge] system from which such receipts are derived." *More Equitable Payments to Counties Having Wildlife Refuges: Hearing on S.179, S.1363, S.1720 and S.2498 Before the Senate Comm. on Commerce*, 88th Cong., 2d Sess. 100 (1964) (hereinafter "1964 Senate Hearings") (R. 877); *Participation by Counties in Refuge Receipts: Hearings on H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030 and H.R. 11008 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 88th Cong., 2d Sess. 72, 111 (1964) (hereinafter "1964 House Hearings") (R. 725, 764).

reproduced in all of the Committee Reports.[33] On several occasions, Department spokesmen flatly described the existing law as providing for payment of 25 percent of net revenues to counties in the case of reserved refuge lands and asserted that the pending bills would effect no change.[34] While mineral resources from such areas were never explicitly mentioned, the Congress was made aware that, in recent years, the single most important source of total refuge "receipts" distributed under the 1935 Act was oil and gas leasing.[35] Yet, it was at no time suggested that revenues from such leases on reserved lands were not included because subject to distribution under a different statute. In several hundred pages of hearings, covering three years, no Interior Department official and no Member of either House ever noted this distinction. On the contrary, the Secretary of the Interior implied that 25 percent of net revenues from "oil production" on all refuges were distributed to counties "under existing law, enacted in 1935." [36] In

[33] See S. Rep. No. 1919, *supra*, at 2, 13 (R. 399, 410); H.R. Rep. No. 2499, *supra*, at 4 (R. 390); H.R. Rep. No. 1753, *supra*, at 14 (R. 603); S. Rep. No. 1096, *supra*, at 25 (R. 638).

[34] See, *e.g.*, *Fish and Wildlife Legislation: Hearings on S.2138, S.2678, S.2770, S.2927 and S.3201 Before a Subcomm. of the Senate Comm. on Commerce*, 87th Cong., 2d Sess. 55 (1962) (hereinafter "1962 Senate Hearings") (R. 464); 1962 House Hearings, *supra*, at 68, 75-76 (R. 548, 555-556); 1964 Senate Hearings, *supra*, at 56, 58 (R. 833, 835); 1964 House Hearings, *supra*, at 41, 43, 50 (R. 694, 696, 703).

[35] 1964 House Hearings, *supra*, at 84 (R. 738). See, also, *id.* at 68 (R. 721); 1964 Senate Hearings, *supra*, at 56 (R. 833), 58 (R. 835); 1962 House Hearings, *supra*, at 70 (R. 550), 76 (R. 556), 83 (R. 563).

[36] 1964 Senate Hearings, *supra*, at 19 (R. 795); 1964 House Hearings, *supra*, at 34 (R. 687). That was, indeed, what the Secretary had been told by his senior staff the day

these circumstances, it may be a fair inference that everyone concerned believed the addition of the word "minerals" in 16 U.S.C. 715s was no more than a "perfecting provision", as the Interior Department reports stated.

5. To be sure, the actual mineral leasing practices with respect to wildlife refuges were not consistent. As one congressional committee summarized the matter after a full investigation in 1956, "[t]he record of the hearings is a picture of extreme administrative confusion." H.R. Rep. No. 1941, *supra*, at 10. See, also, *Udall* v. *Tallman*, *supra*, 380 U.S. at 4-16. It appears that the Department of the Interior, in some cases, was following the distribution scheme of the 1920 Act—as indeed, it did with respect to mineral revenues from the Kenai Moose Range for some years even after 1964. But these occasional administrative errors (if such they were) no more resolve the question whether, as a matter of law, the distribution of revenues from wildlife refuges made up of withdrawn public domain lands was governed by the 1920 Act before 1964, than did the unauthorized granting of leases under the 1920 Act over Indian Reservation lands and acquired lands, ruled improper by Attorneys General Stone and Jackson. And, in light of the contradictory representations made to it in the previous decade, it can hardly be asserted that Congress, in 1964, accepted the proposition that revenues from reserved wildlife refuges were subject to the distribution formula of the 1920 Act.

The upshot is that, in amending the Wildlife Refuge Revenue Sharing Act in 1964, the legislative branch

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before he testified before the Senate Committee and two months before he appeared at the House hearings. See Memorandum to the Secretary of February 20, 1964 (J.A. 92); note 32, *supra*.

was clarifying a very doubtful point. It was unnecessary to resolve the question what *had been* the law: the important objective was to settle the matter for the future. In this situation, it was appropriate to avoid the language of repeal or amendment. Ideally, the operative section should have opened with the words "Notwithstanding any other provision of law, * * *." But, as it seems to us, Congress expressed its meaning clearly enough by introducing an unambiguous prospective rule with the phrase "Beginning with the next full fiscal year and for each fiscal year thereafter, * * *."

We do not suggest that the Court need determine the true rule for sharing mineral resources from "reserved" refuge lands as it existed before 1964. There is no claim here that requires resolving that difficult question. Our submission is simply that the unambiguous action of the Congress in amending the Wildlife Refuge Revenue Sharing Act in 1964 henceforth subjected mineral revenues to the same distribution scheme as other receipts from "public land" refuges, and that the failure to specify that this was a change of law reasonably may be attributed to congressional ambivalence about the previous rule. Whether such a doubt was well founded does not matter: it is enough if—as we have sought to show—the legal situation, as it was seen in 1964, was sufficiently unclear that the 88th Congress may be supposed to have eschewed the thorny task of unravelling the past and was content to settle the future.

6. That the rule for the future *was* settled is clear —whether or not it was a change in law. It is unfortunate that, for a decade, the Department of the Interior failed to implement the 1964 statute as it affected oil and gas revenues from the Kenai Range. But no such practice is self-validating. *SEC* v. *Sloan*, 436 U.S. 103, 117-119 (1978); *Adamo*

Wrecking Co. v. *United States*, 434 U.S. 275, 287-288 n.5 (1978); *Dixon* v. *United States*, 381 U.S. 68, 78 (1965). Certainly, administrative errors involving unauthorized payments from the federal Treasury cannot go uncorrected. *Atlantic Richfield Co.* v. *Hickel*, 432 F.2d 587, 591-592 (10th Cir. 1970). As this Court has stated, there is a "duty [on the part] of all courts to observe the conditions defined by Congress for charging the public treasury." *Federal Crop Ins. Corp.* v. *Merrill*, 322 U.S. 380, 385 (1947). The United States can always retrieve money its officials have mistakenly paid out. *United States* v. *Wurts*, 303 U.S. 414, 415-416 (1938); *Wisconsin Central R. R.* v. *United States*, 164 U.S. 190, 212 (1896); *Wilson Clinic & Hosp., Inc.* v. *Blue Cross of South Carolina*, 494 F.2d 50, 52 (4th Cir. 1974); *Atlantic Richfield Co.*, *supra*, 432 F.2d at 592.

At all events, there is every indication that the treatment of mineral revenues from the Kenai Range until 1975 was not the consequence of a considered administrative evaluation of the 1964 amendment. Rather, it merely continued the previous practice, itself perhaps erroneous and apparently at odds with the views then entertained by the head of the Department. A more reliable indication of the administrative construction of the 1964 amendment to the Wildlife Refuge Revenue Sharing Act is to be found in the first careful and thorough consideration of the matter in 1975—however belated that may have been. This Court has recognized that agency reversals of its earlier statutory interpretations are entitled to judicial deference when there has been a "detailed and comprehensive" reevaluation. *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). See, also, *NLRB* v. *Local 103, International Ass'n of Iron*

Workers, 434 U.S. 335, 351 (1978). The formal opinions of the Solicitor of the Department of the Interior and of the Comptroller General (Pet. App. 26a-58a), now followed by the Department, must be accepted as the definitive administrative statement. In our submission, they warrant confirmation in this Court.

C. THE ALLEGED CONFLICT WITH THE ALASKA STATEHOOD ACT AND ALASKA NATIVE CLAIMS SETTLEMENT ACT

Finally, we turn to the suggestion—noted but not resolved in the courts below (Pet. App. 11a, 25a n.4)—that our construction of the Wildlife Refuge Revenue Sharing Act would conflict with the Alaska Statehood Act (72 Stat. 339) and the Alaska Native Claims Settlement Act (ANCSA) (85 Stat. 668, 43 U.S.C. 1601 *et seq.*). The argument is that Section 28(b) of the Statehood Act and Section 9(d) of ANCSA (43 U.S.C. 1608(d)) require that all mineral revenues derived from public lands in Alaska, including wildlife refuges, be distributed in accordance with Section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. 191). What is more, it is claimed that the Statehood Act embodies an irrevocable "compact," under which Alaska is entitled to 90 percent of mineral revenues generated on public lands of the United States within that State. (See Alaska's brief in the court of appeals, at 42-44.)

1. Section 28(b) of the Alaska Statehood Act (72 Stat. 351) provides as follows:

> Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately be-

> fore the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

This merely substituted the State for the Territory of Alaska, which, by earlier enactments, enjoyed 52½ percent of the mineral revenues distributed under the 1920 Act, in addition to the then usual 37½ percent returned to every State. See Act of May 27, 1947, ch. 83, 61 Stat. 119; Act of July 10, 1957, Pub. L. No. 85-88, Section 2, 71 Stat. 282.

The provision is not in terms a "compact." Compare Section 4 of the Act, 72 Stat. 339. Nor is there anything in Section 28(b) that fixes Alaska's share of mineral revenues more irrevocably than is the case for any other State. Indeed, in enacting ANCSA in 1971, Congress felt free directly to diminish the State's share by granting an overriding 2 percent royalty to the Alaskan Natives (see 43 U.S.C. 1608 (d)), Alaska's objections being overruled.[37] If that was possible, it was certainly open to the federal

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[37] Alaska then advanced the same argument against ANCSA as it does today against the Wildlife Refuge Revenue Sharing Act. See *Alaska Native Land Claims: Hearing on S.1830 Before the Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 260, 264-267, 404, 572 (1969). In response, the Interior Department argued that Section 28(b) of the Statehood Act "was not intended to be a substantive provision, does not operate as such, and furthermore does not come within the compact at all. Thus, Congress is free to deal with revenues under the Mineral Leasing Act in any manner which it deems advisable, whether or not such action would result in amendment of Section 28(b) of the Statehood Act." *Alaska Native Land Claims: Hearing on S.1830 Before the Senate Comm. on Interior and Insular Affairs, supra*, at 573-574. Congress evidently agreed. Alaska did not challenge the provision in judicial proceedings, as the Act invited the State to do within one year. 43 U.S.C. 1609(a).

legislature to effect the change here complained of (asssuming any change occurred).

We stress that, on its face, Section 28(b) of the Statehood Act only reaches revenues *distributed under Section 35 of the 1920 Act*, which, under our submission, does not govern (and perhaps never governed) receipts from oil and gas leases of wildlife refuge lands. Plainly, Congress could remove refuges from the sway of the 1920 Act, just as it could wholly bar mineral development there.[38] Indeed, the Secretary of the Interior, on his own authority, could close any or all refuges to oil and gas leasing, and thereby effectively reduce, or eliminate, Alaska's revenues from this source. See *Udall* v. *Tallman*, *supra*, 380 U.S. at 4. The upshot is that Alaska had no vested right in any mineral revenues from federal wildlife refuges in the State and has no cause to complain.[39]

2. Alaska's reliance on Section 9(d) of ANCSA is equally misplaced. See Br. in Opp. 14. That provision stipulated that all mineral revenues "received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands

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[38] Alaska's claim to a share of federal mineral revenues could equally be defeated by a disposition of the producing lands to private purchasers or by dedicating the area to a purpose inconsistent with mineral development, as by establishing a National Park or Monument. See 30 U.S.C. 181.

[39] Alaska's claim under Section 317(a) of the Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2770-2771, 30 U.S.C. 191, is even weaker. See Br. in Opp. 12. That provision amended Section 35 of the Mineral Leasing Act and reaffirmed Alaska's right to 90 percent of the revenues distributed pursuant to that Section. But, if wildlife refuge revenues were removed from that distribution scheme in 1964 (or earlier), the 1976 law obviously did not reach them.

in Alaska shall be distributed as provided in the Alaska Statehood Act". But if the 1964 Refuge Act amendment removed mineral revenues generated on reserved wildlife refuges from distribution under the Statehood Act, obviously, the royalty provision established under ANCSA does not apply to these receipts. At all events, the Alaska Native Fund is entitled to receive no more than $500,000,000 under ANCSA. Section 9(g), 43 U.S.C. 1608(g). And as of June 30, 1980, the Alaska Native Fund was fully paid. See Appendix B, *infra*.

In sum, nothing in either Section 28(b) of the Alaska Statehood Act or Section 9(d) of the Alaska Native Claims Settlement Act mandates that mineral revenues from reserved wildlife refuge lands in Alaska be distributed under Section 35 of the Mineral Leasing Act.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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Solicitor General

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Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

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Attorneys

NOVEMBER 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3265
78-1443

KENAI PENINSULA BOROUGH

v.

ANDRUS, ET AL.

and

ANDRUS, ET AL.

v.

STATE OF ALASKA

AFFIDAVIT OF LYNN A. GREENWALT

Lynn A. Greenwalt, being first duly sworn, deposes and says:

1. I am the Director of the United States Fish and Wildlife Service of the Department of the Interior, with offices in Washington, D.C. As Director of the Fish and Wildlife Service, I am authorized to exercise all the authorities of the Secretary of the Interior as they relate to fish and wildlife programs, including the administration of the Refuge Revenue Sharing Act, 16 U.S.C. 715s.

2. In 1964, there were 449 areas within the National Wildlife Refuge System. In the "lower 48" States, there were a total of 431 such areas, of which 165 were on reserved public lands. At present there are 576 areas within the National Wildlife Refuge

System. In the "lower 48" States, there are a total of 558 such areas, of which 185 are on reserved public lands.

3. The mineral revenues generated by all wildlife refuges consist entirely of oil and gas revenues.

4. In 1964, there were 18 national wildlife refuges located within the State of Alaska, all of which were on reserved public land. At present there are still 18 national wildlife refuges within the State of Alaska, all of which are on reserved public lands.

5. The only refuge in Alaska generating oil and gas revenues is the Kenai National Moose Range. In fiscal year 1964, it generated $3,813,290 in revenues.

6. In the "lower 48" States, refuges on reserved public lands generated $3,143 in oil and gas revenues in fiscal year 1964. In the 10-year period (fiscal years 1966-1975) following enactment of the 1964 amendment, 78 Stat. 701, to the Act of 1935, oil and gas revenue for refuges on reserved public lands in the "lower 48" is accounted for in the following manner:

10-year Period	Hewitt Lake NWR, Montana	Salt Plains NWR, Oklahoma	Ouray NWR, Utah	TOTAL 10 Years
FY 66-75	$2,735.22	$36,406.96	$9,040.40	$48,182.58

/s/ Lynn A. Greenwalt
LYNN A. GREENWALT
Director, U.S. Fish and
Wildlife Service

Subscribed and sworn to before me, a Notary Public for the District of Columbia, this 6th day of July, 1978.

/s/ [Illegible]
Notary Public

My commission expires: 3/31/83

APPENDIX B

UNITED STATES GOVERNMENT
MEMORANDUM

Date: June 30, 1980

Reply to Attn of: Acting Chief, Division of Program Development & Implementation

Subject: Revenue Payments to the Alaska Native Fund

To: Chief, Division of Finance, BLM, Code 830

This is to advise you that the State of Alaska has made an advance payment of revenues required by Sections 6(a)(3) and 9 of the Alaska Native Claims Settlement Act, in the amount of $292,585,066.52. This, together with the amounts already collected, brings the total amount to $500,000,000.00, the limitation established by Section 6(a)(3) of ANCSA.

/s/ Ralph Sabers

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 332533 124

Nos. 79-1890 and 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, Secretary of the Interior, et al.,
Petitioners

v.

STATE OF ALASKA,
Respondent

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT STATE OF ALASKA

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QUESTION PRESENTED

Whether revenues from federal oil and gas leases on reserved public lands in the Kenai National Moose Range (part of the National Wildlife Refuge System) are to be distributed according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, which provides that 90 percent of such revenues are to be paid to the State of Alaska and 10 percent are to be covered into the United States Treasury, or pursuant to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which allocates 25 percent of the revenues it governs to the county or counties in which the refuge is located (in this case, the Kenai Peninsula Borough) and reserves 75 percent for federal purposes related to the Act.

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5. Congress deliberately made Alaska's 90 percent share of mineral revenues from public lands in Alaska under Section 35 of the Mineral Leasing Act, 30 U. S. C. 191, one of the terms of the Statehood Compact under which Alaska was admitted to the Union to remedy the problem of excessive federal withdrawals in Alaska; it would be anomalous for this Court to hold that federal withdrawals for wildlife refuges remove the withdrawn lands from the distribution formula of Section 35 27

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Nos. 79-1890 and 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, Secretary of the Interior, et al.,
Petitioners[1]

v.

STATE OF ALASKA,
Respondent

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT STATE OF ALASKA

OPINIONS BELOW

The opinion of the court of appeals is reported at 611 F.2d 1210 (9th Cir. 1980). The opinion of the district court is reported at 436 F. Supp. 288 (D. Alaska 1977).

[1] The other petitioners in No. 79-1890 are the Secretary of the Treasury and the Comptroller General.

JURISDICTION

Respondent State of Alaska accepts the petitioners' statements of jurisdiction.

STATUTES INVOLVED

Respondent State of Alaska accepts the petitioners' statements of the statutes involved, with the following additions.

Prior to its amendment in 1964, the Wildlife Refuge Revenue Sharing Act (Section 401 of the Act of June 15, 1935), as then amended, 16 U.S.C. (1958 ed.) § 715s, provided in pertinent part:

> Sec. 401. Twenty-five per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title or under any other law, proclamation, or Executive order, administered by the Fish and Wildlife Service of the United States Department of the Interior, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated . . .

Section 3 of the Mineral Leasing Act for Acquired Lands of 1974, 30 U.S.C. § 352, provides in part:

> Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C.,

sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof.

STATEMENT OF THE CASE

A. Proceedings Below

This case is comprised of consolidated lawsuits brought in the United States District Court for Alaska by the State of Alaska (hereafter "Alaska") and the Kenai Peninsula Borough (hereafter "Kenai"), an Alaska political subdivision similar to a county.[2] The suits were brought against the Secretary of the Interior and other federal officials (hereafter the "Federal Petitioners") for declaratory relief and writs of mandate. Alaska sought a judgment that revenues from oil and gas leases on the Kenai National Moose Range should be distributed pursuant to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, under which Alaska would receive 90 percent of such revenues and the federal government would receive 10 percent. *See* Joint Appendix, pp. 8-15. Kenai sought a judgment that those revenues should be distributed pursuant to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, under which Kenai would receive 25 percent of such revenues

[2] Alaska has no political subdivisions known as "counties." The Alaska analogue to a county is called a "borough." See Alaska Const., art. X.

and the federal government would receive 75 percent. *See* Joint Appendix, pp. 16-24. Both Alaska and Kenai also sought writs of mandate to compel the Federal Petitioners to distribute the revenues in a manner consistent with their respective claims.

The two actions were consolidated. *See* Joint Appendix, pp. 25-26. Kenai thereafter intervened in Alaska's action; *see* Joint Appendix, p. 35, and filed an answer to Alaska's complaint, a counterclaim against Alaska, and a cross-claim against the Federal Petitioners. *See* Joint Appendix, pp. 36-49. The Federal Petitioners answered Alaska's complaint, *see* Joint Appendix, pp. 28-31, and Kenai's cross-claim. *See* Joint Appendix, pp. 50-53.

All parties moved for partial summary judgment [3] on the issue of which statutory scheme governs distribution of revenues from the oil and gas leases on the Kenai National Moose Range. After briefing and argument, the district court granted Alaska's motion and entered a judgment declaring that those revenues should be distributed pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191.

Kenai and the Federal Petitioners appealed to the Court of Appeals for the Ninth Circuit which, after briefing and argument, affirmed the judgment of the district court.

These petitions for writs of certiorari followed.

B. Statement of Facts

The Kenai National Moose Range was established in 1941 when Executive Order No. 8979, 6 Fed. Reg. 6471 (1941), withdrew approximately two million acres of "public and nonpublic land" on the Kenai Peninsula in Alaska and reserved them for use as a refuge and breeding ground for moose.[4] In

[3] Other subsidiary issues were left for later resolution.

[4] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964) added approximately 40,115 acres of public lands to the Range.

Udall v. *Tallman,* 380 U.S. 1, 6 (1965), this Court held that Executive Order No. 8979 did not withdraw the lands in the Range from oil and gas leasing under the mineral leasing laws. Following issuance of leases on the Range in the mid-1950s, an exploratory well was drilled and oil was discovered in commercial quantities in July, 1957. *Id.* at 12.

Revenues from the leases within the Range were first received in fiscal year 1954, and have been received every year since. *See* Joint Appendix, p. 58. These revenues have been substantial, totalling more than $57 million between 1966 and 1976.[5] *See* Joint Appendix, p. 66.

Prior to 1976, such revenues were distributed pursuant to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191.[6] *See* Joint Appendix, pp. 59-60. That statute provides that all moneys from leases of public lands [7] under the Act [8] are to be paid into the United States Treasury for periodic distribution. Such revenues from public lands in Alaska are to be

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[5] In response to Alaska's discovery request, the Federal Petitioners stated that records of revenues before 1966 "are not readily available." Joint Appendix, p. 59. However, pre-1966 revenues also appear to have been substantial. For example, in fiscal year 1964, oil and gas lease revenues from the Kenai National Moose Range totalled $3,813,290. Affidavit of Lynn A. Greenwalt, Appendix A to Federal Petitioners' Brief, p. 2a. Moreover, those leases were producing oil in 1959, and have been doing so every year thereafter. Joint Appendix, p. 55.

[6] Following the effective date of Section 9(d) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1608(d), the computation of Alaska's 90 percent share and the 10 percent Treasury share was made after deducting a 2 percent share for the Alaska Native Fund. Joint Appendix, p. 59.

[7] "Public lands" are lands of the public domain which have never been in private ownership. They are distinguished from "acquired lands" which are lands granted or sold to the United States by a State or citizen. See *Wallis* v. *Pan American Pet. Corp.,* 384 U.S. 63, 65 and n. 2 (1966).

[8] While public lands are leased under the Mineral Leasing Act, 30 U.S.C. 181 *et seq.,* acquired lands are leased under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.* See *Wallis* v. *Pan American Pet. Corp., supra.*

distributed 90 percent to Alaska and 10 percent to the Treasury.[9] The federal official making the decision to distribute the revenues in this manner was the Secretary of the Interior. *See* Joint Appendix, p. 61. The agency making the actual disposition of the funds was the Bureau of Land Management. *Id.*

Since 1976, however, the 90 percent share of the oil and gas revenues from the Kenai National Moose Range which previously had been paid to Alaska has been placed in an escrow account.[10] None of these funds have been distributed to Alaska.

This departure from the pre-1976 administrative practice resulted from a 1975 inquiry from the Director of the United States Fish and Wildlife Service to the Solicitor of the Department of the Interior. He asked whether an amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, 11 years earlier in 1964, required that oil and gas revenues from public lands in wildlife refuges be distributed pursuant to that statute rather than Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, 25 percent of the revenues received would be distributed to the county or counties in which the refuge was located; the remaining 75 percent would then be available for refuge management purposes.[11]

Prior to the 1964 amendment referred to by the Director of the Fish and Wildlife Service, the Wildlife Refuge Revenue

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[9] Under Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, revenues from leases of acquired lands are distributed in the same manner as nonmineral receipts from those lands.

[10] This fund now contains more than $23 million, including small sums from other public land wildlife refuges. See Federal Petitioners' Brief, p. 4 n. 4.

[11] Under subsequent amendments to the Act, net receipts in excess of the amount required for distribution to counties are to be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges.

Sharing Act, 16 U.S.C. (1958 ed.) § 715s, governed distribution of revenues from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges." More than 20 years prior to its amendment, the Comptroller General ruled that revenues from oil and gas leases in wildlife refuges were not included in this listing of revenues subject to distribution under the statute. Comp. Op. B-24128, 21 Comp. Gen. 873 (1942).

The 1964 amendment, P.L. 88-523, 78 Stat. 701, amended the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, in a number of respects. New provisions were added, differentiating for the first time between public lands and acquired lands with respect to the formula for computing the amount of the payments to counties. Counties containing public land refuges continued to receive 25 percent of the revenues from those public lands. Counties containing acquired land refuges were given an option: 25 percent of the revenues from those lands or ¾ of 1 percent of the acquisition cost of the lands. In addition, without discussion in the legislative history, the word "minerals" was added to the list of revenue sources subject to distribution under the statute.

In response to the Director of the Fish and Wildlife Service's request, the Solicitor concluded that the 1964 amendment "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, on which the then-existing administrative practice was based, and that the more recent Act controller. *See* Appendix D to Federal Petitioners' Petition, pp. 26a-33a. The Comptroller General concurred in the Solicitor's opinion. 55 Comp. Gen. 117 (1975); *see* Appendix E to Federal Petitioners' Petition, pp. 34a-41a. In response to a request by the Alaska Attorney General, *see* Joint Appendix, pp. 94-103, the Comptroller General affirmed his original decision. *See* Appendix F to Federal Petitioners' Petition, pp. 421-58a.

These consolidated lawsuits followed.

SUMMARY OF ARGUMENT

1. The question presented is which of two statutes —Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, or the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s—governs distribution of the revenues from federal oil and gas leases on the public lands withdrawn for the Kenai National Moose Range.

Those leases were issued pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.*, which governs mineral leasing of the public lands and specifically authorizes the leasing of oil and gas deposits. Under the express language of Section 35 of the Act, 30 U.S.C. § 191, resultant oil and gas revenues from leases of public lands are to be distributed as provided therein.

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, governs distribution of revenues received from the sale or other disposition of "minerals" on wildlife refuges. The term "minerals" is not unambiguous, and may or may not include oil and gas.

Accordingly, if this case is to be resolved under the "plain meaning" rule of statutory construction, the express terms of the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.*, and particularly the revenue sharing provisions of Section 35, 30 U.S.C. § 191, control the distribution of the oil and gas lease revenues from the Kenai National Moose Range.

2. An implied repeal of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, by the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, must be found before distribution of oil and gas revenues from public lands in refuges are governed by the latter statute. The legislative history of the 1964 amendment shows that Congress did not intend it as an implied repeal of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Moreover, the provisions of Section 35 and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, after its amendment in 1964, may be reconciled.

Construing the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as impliedly repealing Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as it applies to public lands in wildlife refuges, would be at variance with the legislative policy underlying the 1964 amendment.

3. For 11 years after the amendment of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, the Secretary of the Interior continued to pay 90 percent of the oil and gas lease revenues from the public lands in the Kenai National Moose Range to the State of Alaska under Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. In continuing the pre-amendment practice without change (and without question for 11 years), the Secretary demonstrated that both Congress and the appropriate officials in his department assumed that the 1964 amendment had no effect on the distribution of the Moose Range revenues.

This contemporaneous administrative construction is more indicative of the Congressional intent underlying the 1964 legislation, than the later rulings of the Solicitor of the Interior and the Comptroller General, made long after the 1964 amendment and not particularly persuasive.

4. The policy of sharing mineral leasing revenues from public lands with the States in which those lands exist, embodied in Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, has existed for 60 years. The 1976 amendment to Section 35 which increased the share of States other than Alaska from 37½ percent to 50 percent, P.L 94-579, 90 Stat. 2770-2771, indicates that this Congressional policy may be even stronger now than it was 60 years ago.

In light of this recently strengthened Congressional policy, this Court should be reluctant to construe the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as creating an exception to that policy under which officials of the Executive Branch may alter it by withdrawing public lands for wildlife refuges, particularly in the absence of a clear

Congressional understanding that such an exception was being created.

5. The Congressional policy of distributing 90 percent of mineral leasing revenues from public lands in Alaska to that State, embodied in Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and incorporated in Section 28(b) of the Alaska Statehood Act, 72 Stat. 351, was deliberately made one of the terms of the Statehood Compact under which Alaska was admitted to the Union to remedy what Congress perceived as a problem of excessive federal withdrawals in Alaska.

It would be particularly anomalous for this Court to construe the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as taking public lands in Alaska out of the distribution formula of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, upon withdrawal for wildlife refuge purposes when that was the very type of federal Executive Branch action which Congress sought to remedy by giving Alaska 90 percent of the mineral revenues from those lands.

ARGUMENT

1. Mechanical application of the "plain meaning" rule of statutory construction results in the distribution of oil and gas revenues from public lands in the Kenai National Moose Range being governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and not the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.

The question in this case is whether Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, or the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, governs distribution of the revenues from federal oil and gas leases on the public lands of the Kenai National Moose Range. As in any case involving the application and construction of statutes, the starting point must be the language of the Acts themselves. *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 337 (1979).

Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, by its terms, governs distribution of "[a]ll money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act," referencing the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* That Act expressly authorizes the disposition of both "oil" and "gas," as well as "lands containing such deposits owned by the United States," with certain express exceptions not relevant here. Section 1, 30 U.S.C. § 181. As the Federal Petitioners note in their Brief at p. 23 and n. 23, it was early decided that the Act applied only to "public lands."

However, it was never determined that the Act did not apply to such lands withdrawn for wildlife refuges, and it cannot be seriously questioned that the oil and gas leases on the Kenai National Moose Range were issued pursuant to it.[12]

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[12] The Federal Petitioners argue at length that the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, may never have been intended to apply to public lands in wildlife refuges, and that leasing of such lands may have been authorized by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s. Federal Petitioners' Brief, pp. 22-27. However, they ultimately concede that "the alternative view" that the Mineral Leasing Act covers wildlife refuges is "more likely." *Id.*, p. 27. It should be noted that the materials cited by the Federal Petitioners, Brief, pp. 25-26 nn. 28-30, are, at most, equivocal on the point. For example, Op. Sol. Interior Dept. M-34516 (the "Cohen memo" of August 5, 1946), states that "authority . . . to grant applications for the drilling for oil and gas on *public domain* lands is acknowledged." Joint Appendix, p. 70 (emphasis in original). Only the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, could have conferred such authority. The July 6, 1951 memorandum by the Chief Counsel of the Fish and Wildlife Service found it unnecessary to consider the question. Joint Appendix, pp. 88-89. The August 14, 1951 letter from the Administrative Assistant to the Comptroller General, Joint Appendix, 73-81, was an attempt to get the Comptroller General to recede from his earlier opinion of March 18, 1942, 21 Comp. Gen. 873 (1942), that Section 401 of the Act of June 15, 1935 (the Wildlife Refuge Revenue Sharing Act), did not encompass oil and gas activities. The Comptroller General was not persuaded. See Comptroller General's letter of October 10, 1951, Joint Appendix, pp. 82-86,

(footnote continued on following page)

Congress so noted in 1958.[13] That premise underlies the Deputy Solicitor of Interior's decision in *James K. Tallman et al.*, 68 I.D. 256 (1965). Finally, this Court adopted a similar view in *Udall* v. *Tallman*, 380 U.S. 1 (1964).

Summarizing, the "plain meaning" of Sections 1 and 35 of the Mineral Leasing Act, 30 U.S.C. §§ 181 and 191, fully encompasses" [a]ll money received" from the "oil" and "gas" leases on the "public lands" of the Kenai National Moose Range.

On the other hand, the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, by its terms, governs distribution of "all revenues received . . . from the sale or other disposition of . . . minerals . . . in connection with the operation and management of " refuges. Both the Federal Petitioners and Kenai argue that the "plain meaning" of this statutory language compels the conclusion that this statute governs distribution of the oil and gas lease revenues from the Kenai National Moose Range. Federal Petitioners' Brief, pp. 13-17; Kenai's Brief, pp. 19-23.

However, as this Court noted some years ago, the term "mineral" is used in many different senses, and dictionary definitions are not helpful in ascertaining its significance in a

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at p. 85. (Indeed, the Comptroller General still held this opinion as late as June 11, 1976. Comp. Op. B-118678, Appendix F to Federal Petitioners' Petition, pp. 42a-58a, at p. 46a.) The 1956 testimony by counsel for the Fish and Wildlife Service quoted in the Federal Petitioners' Brief, p. 26 n. 29, indicates only that the 1935 Act would authorize oil and gas leasing only if the Mineral Leasing Act did not—i.e., only if the withdrawal for the refuge withdrew the lands from the mineral leasing laws. Finally, even the Federal Petitioners find only presumptive support in H.R. Rep. No. 1941, 84th Cong., 2d Sess. 3-4 (1956).

[13] See Hearings before Senate Committee on Interior and Insular Affairs on H.R. 8054, 85th Cong., 2d Sess. (1958), p. 77, and S. Rep. No. 1720, 85th Cong., 2d Sess. (1958), p. 5.

given case.[14] *Northern Pacific Ry. Co.* v. *Soderberg,* 188 U.S. 526, 530 (1903).

On the question whether the term "minerals" includes oil and gas, one leading text has noted that there appear to be four different positions:

> (1) the term minerals includes oil and gas unless other language in the instrument so restricts the definition of the term as to exclude these natural resources;
>
> (2) the term minerals does not include oil and gas unless other language in the instrument indicates that the term has been used with intent to include these natural resources;
>
> (3) there is a rebuttable presumption that the term minerals includes (or does not include) oil and gas; and
>
> (4) a grant or reservation of minerals is ambiguous as to whether oil and gas are included and hence extrinsic evidence of intent is admissible.

1 Williams and Meyers, *Oil and Gas Law* (1978 Ed.) § 219, p. 263. Another leading textwriter has noted that oil and gas are not "minerals" in a true scientific sense, although he notes that most courts hold that they are "minerals" in the broad general sense in which the term is usually employed. 1 Summers, *Oil and Gas* (2d Ed. 1954) § 2.

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[14] As but one example, the House Committee on Public Lands left the word "minerals" in an amendment to H.R. 3022, the bill which ultimately became the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.,* on the "understanding," reached with representatives of the Department of the Interior, "that the word 'mineral,' in this instance, should apply only to helium, fissionable materials, or any other mineral absolutely essential to the defense of the country, but excluding the minerals specifically mentioned in the bill." H.R. Rep. No. 550, 80th Cong., 1st Sess. (1947), reprinted at 1947 U.S. Code & Cong. Admin. News, 1661, 1663.

All this apparent confusion regarding the scope of the word "minerals" prompted one student commentator to suggest that the soundest approach is to regard it as ambiguous in all contexts. Note, 34 TEXAS L. REV. 1102 (1956). In other words, the term "minerals" has no "plain meaning."

Accordingly, if resolution of this case turns on the application of the "plain meaning" rule to the two statutes involved here,[15] distribution of the oil and gas revenues from federal leases on the public lands of the Kenai National Moose Range must be governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Such revenues do not come within the purview of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, unless and until the word "minerals" in that statute is construed to include oil and gas.

2. Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, controls distribution of the oil and gas lease revenues from the public lands in the Kenai National Moose Range unless the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, repealed it by implication; the legislative history of the 1964 amendment shows that no implied repeal was intended by Congress.

Since its enactment in 1920, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, has controlled distribution of oil and gas lease revenues on public lands, including those in wildlife refuges. *See* Part 1, *supra.*

As originally enacted, and up until its amendment in 1964, the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (1958 Ed.) § 715s, governed revenues "from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and

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[15] The fact that there are two arguably conflicting statutes involved here distinguishes this case from the normal "plain meaning" case. See, *e.g., United States* v. *Clarke,* 445 U.S. 253 (1980).

from other privileges on refuges." Early on, the Comptroller General ruled that this language did not encompass revenues from oil and gas development. Comp. Op. B-24128, 21 Comp. Gen. 873 (1942).

In 1947, this result was modified when the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 315 *et seq.*, both authorized the leasing of such lands,[16] Section 3, 30 U.S.C. § 352, and directed that resultant revenues be distributed in the same manner as nonmineral revenues from those lands. Section 6, 30 U.S.C. § 355. Accordingly, oil and gas revenues from acquired lands in wildlife refuges became subject to distribution under the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, not by the terms of that statute but by the express direction of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 355.[17]

In other words, the distribution of oil and gas lease revenues is governed by the terms of the Act which authorized the leasing of the lands in the first place. For leases on public lands, including those in wildlife refuges, revenue distribution necessarily is governed by Section 35 of the Mineral Leasing Act (the Act authorizing the leasing of those lands), 30 U.S.C. § 191.[18]

However, it is suggested that a 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, changed this result, at least insofar as oil and gas revenues from

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[16] It had earlier been held that the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, did not authorize the leasing of acquired lands. 40 Op. Atty. Gen. 9 (Jan. 3, 1941).

[17] See Comptroller General's October 10 1951 letter, Joint Appendix, pp. 82-86, at p. 84.

[18] As noted in Part 3, *infra*, the administrative practice of the Department of the Interior followed this analysis until this dispute arose in 1976.

public lands in wildlife refuges are concerned. That 1964 amendment, P.L. 88-523, 78 Stat. 701-702, added the world "minerals" to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.[19]

To reach this result, it must be found that the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, impliedly repealed Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, at least as far as public lands in wildlife refuges are concerned. Such "repeals by implication are not favored." *Morton* v. *Mancari,* 417 U.S. 535, 549 (1974), quoting *Posadas* v. *National City Bank,* 296 U.S. 497, 503 (1936). "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Morton* v. *Mancari, supra,* at 550 (citation omitted). Here, there has been no affirmative showing of an intention to repeal; indeed, the legislative history shows that Congress did not intend the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to change the law in this respect. Further, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, are easily reconcilable.[20]

A number of bills were introduced in the 87th Congress to amend the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.[21] There is some evidence that members of both houses of Congress contemplated that these bills, as originally introduced, would affect only acquired lands and have absolutely

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[19] It also added "leases for public accommodations or facilities . . ." to the list.

[20] This is precisely what the district court and the court of appeals accomplished.

[21] S. 2138, S. 2678, S. 2770, S. 2927 and S. 3201, 87th Cong.; H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143, H.R. 12144 and H.R. 12145, 87th Cong.

no impact on public lands in refuges.[22] This view was shared by representatives of the Department of the Interior.[23]

None of these bills, however, made any reference to "minerals." The first reference to "minerals" was in a proposed draft amendment accompanying a June 20, 1962 letter from Assistant Secretary of the Interior Briggs to Senator Magnuson, chairman of the Senate Committee on Commerce.[24] In his letter, Mr. Briggs did not point out that the word "minerals" would be added to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, if the proposal was adopted by Congress. Instead, before outlining in some detail some of the changes which would be made, he stated that "our draft contains various perfecting and other provisions that we consider, from our study of this matter, to be desirable." As the Federal Petitioners note, presumably the addition of the world "minerals" was one of these "perfecting" provisions.

After intimating that the proposed draft amendment would revise "the authority and procedure concerning revenue sharing" under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, he recited the revenue sources included in that statute at that time. He continued:

> With minor exceptions, receipts collected from both reserved public lands and acquired lands in the

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[22] See, *e.g.*, S. Rep. No. 1919, 87th Cong., 2d Sess. (1962), p. 1; Hearings before the Subcommittee on Fisheries and Wildlife conservation of the Committee on Merchant Marine and Fisheries, House of Representatives, 87th Cong., 2d Sess., on H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143, H.R. 12144 (H.R. 12145 identical bill) (1962) (hereafter "1962 House Hearings"), p. 33.

[23] See, *e.g.*, Hearings before a Subcommittee of the Committee on Commerce, United States Senate, 87th Cong., 2d Sess., on S. 2138, S. 2678, S. 2770, S. 2927, and S. 3201 (1962) (hereafter "1962 Senate Hearings"), p. 57; 1962 House Hearings, pp. 72 and 75-76.

[24] See S. Rep. No. 1919, 87th Cong., 2d Sess., pp. 13-17, at p. 15. An identical letter was sent to Congressman Bonner, Chairman of the House Committee on Merchant Marine and Fisheries, on June 22, 1962. See H.R. Rep. No. 2499, 87th Cong. 2d Sess. (1962), pp. 4-6.

> refuge system are subject to the provisions of section 401 of the 1935 act. Where refuges have been established on lands that are under the primary jurisdiction of other Federal agencies, such as the Corps of Engineers and the Bureau of Reclamation, and *where game ranges are jointly administered with the Bureau of Land Management, the revenues from such land are generally disposed of in accordance with other laws.*

(Emphasis added.)

For purposes of oil and gas leasing, "Alaska wildlife areas" [25] were treated the same as "game range lands." *See* 43 CFR 192.9(b)(3) (1959 Ed.). Under that regulation, oil and gas leases on such lands would be issued only after the Bureau of Land Management and the United States Fish and Wildlife Service had agreed on which lands would not be leased. With respect to the Kenai National Moose Range, such agreement was announced on July 24, 1958. *See* 23 Fed. Reg. 5883. The Bureau of Land Management administered the revenues from the leases on the Kenai National Moose Range, as directed by the Secretary of the Interior. *See* Joint Appendix, p. 61. The Bureau distributed those revenues in accordance with Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, *see* Joint Appendix, pp. 59-60, or, in the words of Mr. Briggs, "in accordance with other laws."

Once it is understood that oil and gas lease revenues from the public lands in the Kenai National Moose Range were one of the exceptions to distribution under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s,[26] the addition of the

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[25] Defined in 43 CFR 192.9(a)(4) (1959 Ed.) in such a way as to include the Kenai National Moose Range.

[26] A view held by the Comptroller General as late as 1976. See Appendix F to Federal Petitioners' Petition, pp. 42a-58a, at p. 46a. In light of this, it is somewhat surprising that the Comptroller General,

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word "minerals" to that statute as a mere "perfecting" provision without discussion is not remarkable. Moreover, it is entirely consistent with the testimony of the Department of the Interior witnesses who testified on the proposed amendment and conforms perfectly with Congressional expectations.

For example, Daniel H. Janzen, Director of the Bureau of Sport Fisheries and Wildlife, U.S. Fish and Wildlife Service, Department of the Interior, testified that sharing oil and gas revenues with counties[27] resulted in windfalls; nonetheless, the Department of the Interior proposal retained the 25 percent sharing formula for receipts from public lands in refuges.[28] If Interior's proposal—adding the word "minerals"—was to make oil and gas revenues on public land refuges subject to distribution under the 25 percent formula, revenues not previously subject to such distribution, the possibility of such windfalls resulting would be increased. Furthermore, he testified that he expected no increase in oil and gas receipts subject to such distribution[29]; if addition of the word "minerals" subjected oil and gas revenues from public lands in refuges to such distribution, the Kenai National Moose Range revenues would have been added to those already covered.

Finally, S. Rep. No. 1919, pp. 4-10, included a table showing the payments to counties under the then-existing law as well as payments under the proposed bill. On p. 10, Kenai

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one of the federal Petitioners here, now joins in the suggestion that the oil and gas revenues from the public lands in the Kenai National Moose Range were governed by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, prior to its amendment in 1964. See Federal Petitioners' Brief, p. 27.

[27] Such revenues were from leases on acquired lands in refuges, issued under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.* Under Section 6 of that Act, 30 U.S.C. 355, those revenues were distributed under the formula set out in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s.

[28] 1962 Senate Hearings, p. 55; 1962 House Hearings, p. 68.

[29] 1962 House Hearings, p. 76.

revenues are listed as $7,211. Although n. 2 to the table indicates that payments from public lands are not included in the estimates under the proposed bill, a "Statement Concerning Receipts and Payments to Counties from Wildlife Refuges Containing Reserved Public Lands" which follows the table indicates that estimated Kenai revenues under the proposed bill would still equal $7,211.[30]

No bill passed the 87th Congress, and several similar bills were introduced in the 88th Congress.[31] All but one of these bills[32] included the word "minerals"[33] in the new list of revenue sources to be governed by the amended Wildlife Revenue Sharing Act, 16 U.S.C. § 715s.

Again, representatives of the Department of the Interior noted that one exception to the revenues covered by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, were those from lands jointly administered by the Bureau of Land Management.[34] Committee reports in both houses indicated that 1963 payments from the Kenai National Moose Range would total $1,768 under both the existing law and the proposed amendment.[35]

A number of Congressmen were quite concerned that refuge receipts would be insufficient to make the additional

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[30] The Federal Petitioners must have inadvertently overlooked this "Statement" when they assert that this table "specifically avoided any indication of the anticipated payments to counties from 'public land' areas under the proposed amendment." Federal Petitioners' Brief, p. 19 n. 16.

[31] S. 179, S. 1363, S. 1720 and S. 2498, 88th Cong.; H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030 and H.R. 11008, 88th Cong.

[32] S. 1720, 88th Cong.

[33] As well as "leases for public accommodations or facilities. . . ."

[34] See Assistant Secretary of the Interior John A. Carver's June 7, 1963 letter to Congressman Bonner, H.R. Rep. No. 1753, 88th Cong., 2d Sess. (1964), pp. 13-19, at p. 14; Assistant Secretary of the Interior Briggs' July 15, 1963 letter to Senator Magnuson, S. Rep. No. 1096, 88th Cong., 2d Sess. (1964), pp. 24-29, at p. 14.

[35] S. Rep. No. 1096, 88th Cong., 2d Sess. (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. (1964).

payments which would be required under the amendment.[36] At no time did the Department of the Interior witnesses suggest to the committee that the amendment would provide a new source of revenue, even though 1964 revenues from the Kenai National Moose Range totaled $3,813,290 (see n. 5 *supra*), and subjecting them to distribution under the amended Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, would have alleviated any Congressional concern in this regard. Instead, they assured the Congressmen that the existing revenue sources were sufficient.[37] The only oil and gas revenues then distributed pursuant to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, were those from the acquired lands of the Delta Refuge in Plaquemines Parish, Louisiana.[38] Members of the committee explicitly stated that they were relying on the figures supplied by the Department of the Interior witnesses.[39]

All of this testimony, and the resultant expressions of Congressional understanding, bear out the repeated statements by spokesmen for the Department of the Interior that payments

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[36] See Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, House of Representatives, 88th Cong., 2d Sess., on H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030, H.R. 11008 (hereafter "1964 House Hearings"), pp. 48-53, 75-77, 81-98.

[37] See 1964 House Hearings, pp. 53, 83, 86.

[38] See 1964 House Hearings, p. 68.

[39] See S. Rep. No. 1096, 88th Cong., 2d Sess. (1964), p. 3; 1964 House Hearings, pp. 81, 83, 84, As it turned out, however, those witnesses were wrong. By 1976, the funds in the refuge revenue sharing account were insufficient by 27 percent. See S. Rep. No. 95-1174, 95th Cong., 2d Sess. (1978), reprinted at 4 [1978] U.S. Code and Cong. Admin. News 2979, at p. 2980. This may be the reason for the Director of the Bureau of Fish and Wildlife Service's 1975 inquiry whether the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, made oil and gas revenues from public lands in wildlife refuges subject to distribution under that statute. Such a result would add several million dollars to the fund annually, easily covering the shortfall the fund was experiencing.

to counties from reserved public lands after the amendment would be the same as under the previous law.[39a]

Alaska submits that the foregoing demonstrates that Congress never intended the addition of the word "minerals" to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to encompass oil and gas revenues from public lands, previously governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. This case is analogous to *Train* v. *Colorado Public Interest Group,* 426 U.S. 1 (1976), where this Court held that the term "radioactive materials" in the 1972 amendments to the Federal Water Pollution Control Act, 86 Stat. 816, did not include "source, by-product, and special nuclear materials" subject to Atomic Energy Commission regulation. Given the long-standing legislative policy of sharing public land mineral revenues with States,[40] this Court's comment in *Train* seems particularly appropriate: "Far from containing the clear indication of legislative intent that we might expect before recognizing such a change in policy, the legislative history reflects, on balance, an intention to preserve the pre-existing regulatory plan." 426 U.S. at 24.

To reconcile the two statutes involved, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, all one must do is construe the word "minerals" in the latter statute as encompassing those minerals which are not specifically addressed elsewhere (as far as revenue distribution goes). In terms of oil and gas, the word "minerals" in the Wildlife Revenue Sharing Act, 16 U.S.C. § 715s, would then include oil and gas from acquired lands by virtue of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 355; however, it would not include

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[39a] See H.R. rep. No. 1753, 88th Cong., 2d Sess. (1964), pp. 1-2, 11-12; Hearings on S. 179, S. 1363, S. 1720 and S. 2498 before the Senate Committee on Commerce, 88th Cong., 2d Sess. (1964), pp. 56 and 58; 1964 House Hearings, pp. 68 and 84; 1962 House Hearings, pp. 70, 76 and 83.

[40] See Parts 4 and 5, *infra.*

oil and gas from public lands in wildlife refuges because Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, specifically mandates a different distribution scheme for revenues from that source. This eminently sensible solution, harmonizing the two statutes, avoiding any repeal by implication, and conforming in all respects with the legislative history and Congressional expectations underlying the 1964 legislation, was adopted by both the district court and the court of appeals below, and properly so.

Finally, it should be noted that construing the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, as making oil and gas revenues from public lands in refuges subject to its distribution formula could defeat the avowed Congressional purpose in passing the legislation in the first place. It is not disputed that the primary purpose of the 1964 amendment was to remove State opposition to placement of additional lands in wildlife refuges. *See* Federal Petitioner's Brief, p. 19 n. 15. It certainly can be anticipated that States will object to the withdrawal of additional public lands for wildlife refuges if such a withdrawal might impact State revenues by taking them out of the coverage of Section 35 of the Mineral Leasing Act, 30 U.S.C. §191. The Court should not adopt a construction of the word "minerals" in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, which would lead to such an unreasonable result at variance with the legislative policy underlying the 1964 amendment. *United States* v. *American Trucking Associations,* 310 U.S. 534 (1940).

3. The contemporaneous and continuous practice of the Department of the Interior in distributing the oil and gas lease revenues from the Kenai National Moose Range pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. §191, is indicative of the Congressional intent underlying the 1964 amendment.

This Court has stated on many occasions that the contemporaneous construction of statutory provisions by the administrative officers charged with making them work is entitled to

deference. *Udall* v. *Tallman,* 380 U.S. 1 16 (1965). Here, there is no question that the Department of the Interior continued the pre-1964 practice of distributing the oil and gas revenues from leases of the public lands in the Kenai National Moose Range pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. §191, for 11 years after the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, and that this was done at the direction of the Secretary of the Interior.[41]

This practice was not questioned by anyone—Congress, officials of the Executive Branch, or counties—until 1975. At that time, contemporaneously with a 27 percent shortfall in the refuge revenue sharing account,[42] the Director of the Fish and Wildlife Service raised the issue. Both the Federal Petitioners and Kenai now assert that the administrative interpretations by the Solicitor of the Department of the Interior and the Comptroller General which followed are entitled to deference. Federal Petitioners' Brief, pp. 32-33; Kenai's Brief, pp. 30-31.

However, it is *contemporaneous* administrative constructions, when the new statutory scheme is untried and new, to which the most deference should be paid. *Udall* v. *Tallman, supra.* This is particularly true where, as here, the administrators participated in drafting the language at issue and made their views known to Congress in committee hearings. *Zuber* v. *Allen,* 396 U.S. 168, 192 (1969). Alaska submits that this is the archetypical case contemplated by Mr. Justice Blackmun, concurring in the judgment in *SEC* v. *Sloan,* 436 U.S. 103, 126 (1978), when he stated that the doctrine of contemporaneous construction

> focuses on the "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion," [*Norwegian Nitrogen Co.* v. *United States,* 288 U.S. 294 (1933)] precisely because their action is itself evidence of

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[41] See Joint Appendix, p. 61.

[42] See n. 39, *supra.*

> assumptions—perhaps unspoken by either the administrators or Congress—brought to a regulatory problem by all involved in its solution. Indeed, common experience tells us that it is assumptions which everyone shares which often go unspoken because their very obviousness negates the need to set them out.

That is precisely the case here.

To defer to the later interpretations by the Solicitor and the Comptroller General would be to misinterpret the policy of giving deference to administrative construction. There can be no question that the courts are the final authorities on issues of statutory construction. *Volkswagenwerk Aktiengesellschaft* v. *F. M. C.*, 390 U. S. 261 (1968). Contemporaneous administrative constructions are helpful aids to a court, long after the legislation was enacted, in determining what was intended at the time.

Petitioners appear to argue that the rule is that courts should defer to whatever administrative interpretation suits the agency's fancy at that particular point in time. This cannot be the law. Administrative construction of a statute "is only one input in the interpretational equation." *Zuber* v. *Allen, supra,* at 192. It should not be used blindly to validate a long-after-the-fact administrative reinterpretation of a statute which the agency helped draft in the first place.

The Court should note the mischief which might result from adoption of the Petitioners' argument on this issue. After assisting Congress in drafting a statute and representing that certain results would follow, the agency would "construe" the statute in a contrary manner and assert that its new views are entitled to deference. Such is not the law. *Cf., United States* v. *Leslie Salt Co.*, 350 U. S. 383 (1956)(Treasury not permitted to reinterpret terms "debentures" and certificates of indebtedness").

To the extent that this Court should give deference to an administrative interpretation of a statute, it should do so because that interpretation is indicative of the Congressional intent underlying the statute. Where there are two conflicting interpretations, one contemporaneous and one long-after-the-fact, the contemporaneous interpretation should be given deference, as it is more likely indicative of the Congressional intent underlying the satute. This is true whether the contemporaneous interpretation is a formal legal analysis or, as here, a purely practical construction.

Under both the established principle of deference to administrative construction and policy considerations, the only administrative interpretation indicative of the legislative intent underlying the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U. S. C. §715s, and therefore entitled to deference, was the Department of the Interior's pre-1976 practice of distributing the oil and gas lease revenues from the public lands of the Kenai National Moose Range Pursuant to Section 35 of the Mineral Leasing Act, 30 U. S. C. §191.

4. In light of the long-standing Congressional policy of sharing mineral revenues from public lands with the States in which those lands are located, recently reemphasized, this Court should be reluctant to find an exception to that policy under which officials of the Executive Branch may alter it by withdrawing public lands for wildlife refuges.

The Congressional policy of sharing mineral revenues from public lands with the States in which those lands are located has existed for 60 years, since the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*, was enacted in 1920. Under Section 35 of the Act as originally enacted, 41 Stat. 450, the States within which the lands were located were to receive 37½ percent of the revenues, the Federal Reclamation Fund would receive 52½ percent, and the Treasury would receive 10 percent.

In 1976, Section 35 was amended by P.L. 94-579, 90 Stat. 2770-2771. In this amendment, Congress not only continued its

previous policy of sharing public land mineral revenues with the States, it actually strengthened it by increasing the share of States other than Alaska to 50 percent.

In light of this long-standing Congressional policy, recently restated and strengthened, Alaska submits that this Court should be reluctant to adopt a rule of law in this case which would permit officials of the Executive Branch to alter that policy by withdrawing public lands for wildlife refuges. This is particularly true in light of the legislative history discussed in Part 2, *supra,* which makes clear that Congress did not intend the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to impliedly repeal Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as it applies to public lands in wildlife refuges. "A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, 'excepting as a different purpose is plainly shown." *United States* v. *American Trucking Associations,* 310 U.S. 534, 544 (1940), quoting *Boston Sand & Gravel Co.* v. *United States,* 278 U.S. 41, 48 ( ).

5. Congress deliberately made Alaska's 90 percent share of mineral revenues from public lands in Alaska under Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, one of the terms of the Statehood Compact under which Alaska was admitted to the Union to remedy the problem of excessive federal withdrawals in Alaska; it would be anomalous for this Court to hold that federal withdrawals for wildlife refuges remove the withdrawn lands from the distribution formula of Section 35.

As originally enacted in 1920, the Territory of Alaska was excluded from the revenue sharing provisions of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. In 1947, however, Section 35 was amended to provide that the Territory of Alaska also was to receive a 37½ percent share of the mineral revenues from the public lands within the Territory. Act of May 27,

1947, 61 Stat. 119. In 1957, Section 35 was further amended to provide that the Territory would receive an additional 52½ percent share of such revenues, the share that had been earmarked for the Federal Reclamation Fund. Section 2(g), Act of July 10, 1957, 71 Stat. 282. The reason for this amendment was that the Territory of Alaska was not covered by the Federal Reclamation Fund, and Congress perceived this as a discrimination which it sought to remove. *See* S. Rep. No. 475, 85th Cong., 1st Sess. (1957), reprinted at 2 [1957] U.S. Code & Cong. Admin. News 1294. In Section 28(b) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 351, the new State of Alaska was made entitled to this 52½ percent share.

The Federal Petitioners assert that Section 28(b) of the Alaska Statehood Act "merely substituted the State for the Territory of Alaska, which, by earlier enactments, enjoyed 52½ percent of the mineral revenues distributed under the 1920 Act, in addition to the then usual 37½ percent returned to every State." Federal Petitioners' Petition, p. 34.

However, the legislative history of the Section 28(b) amendment to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, shows that it was much more than just a technical amendment.

> In order to understand clearly the necessity for certain different provisions in the Alaska statehood bill, it is advisable to have in mind some of the basic facts about Alaska's peculiar situation.
>
> Over 99 percent of the land area of Alaska is owned by the Federal Government. The committee believes that such a condition is unprecedented at the time of the admission of any of the existing States.
>
> The public land laws of the United States, including those providing for the disposal of the public domain to private individuals, theoretically are generally applicable to Alaska. The committee, however, found that the beneficial effects of these

laws have been and are vitiated to a large degree by the Federal policies of the last half century, of withdrawing from public use many of the more valuable resources of the Territory through the creation of tremendous Federal reservations for the furtherance of the programs of the various Federal agencies. Thus, approximately 95 million acres—more than one-fourth of the total area of Alaska—is today enclosed within various types of Federal withdrawals or reservations. Much of the remaining area of Alaska is covered by glaciers, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.

* * *

As previously noted, tremendous acreages of land have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the Territory, including the forest industries, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

> In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in this bill.

H.R. Rep. No. 624, 85th Cong., 2d Sess., reprinted in 2 [1957] U.S. Code & Cong. Admin. News 2933, 2937-2940. One of those specific provisions was the amendment to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, contained in Section 28(b) of the Statehood Act.

As noted by the Federal Petitioners, substantial volumes of oil and gas are believed to underlie several of the 17 other wildlife refuges in Alaska. See Federal Petitioners' Brief, p. 4 n. 4. All of these refuges are on public lands otherwise subject to leasing under the Mineral Leasing Act, 30 U.S.C. § 181. *See* Affidavit of Lynn A. Greenwalt, Appendix A to Federal Petitioners' Brief, pp. 1a-2a.

Again, the words of *United States* v. *American Trucking Associations,* 310 U.S. 534, 544 (1940) are appropriate: "A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to settled policy, 'excepting as a different purpose is plainly shown." (Footnote omitted.) This seems particularly appropriate where construing the word "minerals" in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as encompassing mineral revenues from wildlife refuges on public lands in Alaska would defeat Alaska's 90 percent share of such revenues only upon the happening of the very event that Section 28(b) of the Statehood Act was attempting to remedy, federal withdrawal of those lands.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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Nos. 79-1890 and 79-1904

IN THE

In the Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

STATE OF ALASKA, ET AL.

KENAI PENINSULA BOROUGH, PETITIONER

v.

STATE OF ALASKA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY MEMORANDUM FOR THE FEDERAL PETITIONERS

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We confine this reply to two points raised for the first time in this Court.

1. Only the briefest response is appropriate to Alaska's new suggestion that the term "minerals," added to the Wildlife Refuge Revenue Sharing Act in 1964, does not embrace oil and gas (Resp. Br. 12-14). The point was expressly discussed, and resolved in the affirmative, by the 1975 opinions of the Solicitor of the Department of the Interior (Pet. App. 30a-33a)[1] and of the Comptroller General (Pet. App. 38a-39a). At no time, until now, did the State dispute this conclusion.

On the contrary, in its representations to the Comptroller General (J.A. 94-103, 116-119), Alaska was advancing a wholly different argument: that "by adding the term 'mineral' Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to Section 715s," but not to alter the distribution scheme for mineral receipts from public land refuges (J.A. 97-98; see also J.A. 118). The State maintained that stance in the district court and the court of appeals. Thus, in its Memorandum in Support of its Motion for Partial Summary Judgment (R. 161 ff), Alaska argued that the "addition of the term 'minerals' in the list of enumerated products was intended to do no more than confirm distribution of oil and gas revenues under the Mineral Leasing Act for Acquired Lands" (R. 173). So, also, in a subsequent Response and Reply filed in the district court (R. 961 ff), Alaska insisted that "the state's position is not that the word 'minerals' be ignored, but rather that the statute be

[1] Our references are to the Petition in No. 79-1890.

construed to apply the word 'minerals' to acquired lands in wildlife refuges but not wildlife refuges created from reserved public domain" (R. 962). And, in its appellate Brief,[2] Alaska itself repeatedly referred to oil and gas leasing receipts as "mineral revenues" (*e.g.*, *id.* at 1, 2, 3, 8, 9, 13, 16, 18), and ultimately endorsed the district court ruling, described as holding "that Congress intended the word 'minerals' in the 1964 amendment to 16 U.S.C. § 715s to include only 'certain minerals'—i.e., minerals on acquired lands in the National Wildlife Refuge System" (*id.* at 26).

It is not surprising, therefore, that both the district court (Pet. App. 19a-25a) and the court of appeals (Pet. App. 7a-11a) accepted without question the premise that "revenues * * * from the sale or other disposition of * * * minerals" in the amended Wildlife Refuge Revenue Sharing Act included oil and gas lease receipts—albeit they went on to hold that only such revenues from acquired land refuges were reached. Without questioning the State's right to defend those decisions on alternative grounds, we may perhaps comment that it is very late in the day to be urging a new "ambiguity" that went unnoticed during five years of litigation.

As is usually the case with such last-minute arguments, the point is without substance. Alaska's present suggestion is that "minerals" in the Wildlife Act does not include oil and gas and that references to oil and gas leasing revenues in the legislative history of the 1964 amendment merely recognize the preexisting distribution scheme mandated for acquired land refuges by the Mineral Leasing Act for Ac-

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[2] We have lodged with the Clerk a copy of Alaska's Brief in the court of appeals.

quired Lands of 1947. Resp. Br. 12-13, 15, 19. But the older statute also governed leasing for coal, phosphate, oil shale, sodium, potassium and sulphur. 30 U.S.C. 352. Is it argued that these undoubted "minerals" are also not encompassed by the 1964 amendment? That would render the addition of the word "minerals" to the Refuge Act wholly meaningless. Or, rather, is it conceded that "hard" minerals covered by the Acquired Lands Leasing Act are included, but not oil and gas? That would make the addition of "minerals" in 1964 a very imperfect "perfecting" amendment—still compelling the reader of the Refuge Act to look elsewhere to know how oil and gas revenues from acquired land refuges are to be distributed.

The answer is obvious. At the least—as Alaska itself has previously always maintained—the 1964 amendment to the Refuge Act means to embrace all "minerals" specified in the Acquired Lands Leasing Act, including oil and gas. The only debatable point is whether—as the text plainly says—those minerals are subjected to the Refuge Act distribution scheme even when the lease covers public land reserved for wildlife purposes. We do not here repeat our submission on that question.

2. No less novel is Alaska's present contention that the Kenai Moose Range and other "Alaska wildlife areas" are uniquely exempted from the distribution formula of the Wildlife Refuge Revenue Sharing Act (Resp. Br. 17-19). At no previous stage of the proceedings, including the State's submissions to the Comptroller General, was this suggestion remotely advanced. All parties have submitted the case, and each tribunal has considered it, on the basis that Alaskan refuges were indistinguishable for relevant

purposes from all other wildlife refuges made up of reserved public lands.[3] At all events, the point is wholly without merit.

As amended in 1964, the Wildlife Refuge Revenue Sharing Act applies to "those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by [the Secretary of the Interior] through the United States Fish and Wildlife Service." 16 U.S.C. (Supp. II) 715s(a).[4] Significantly, even now, Alaska does not dispute that the Kenai Range fits within this definition. Nor could any such argument be advanced.

It is conceded that the Range is among the "Alaska wildlife areas" identified in the Secretary's mineral leasing regulation (Resp. Br. 18 n.25), which are there expressly described as "administered by the United States Fish and Wildlife Service." 43 C.F.R. 192.9(a)(4) (1959); 43 C.F.R. 3101.3-3(b). De-

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[3] Except only as the State has invoked the Alaska Statehood Act and the Alaska Native Claims Settlement Act as obstacles to applying the Refuge Act there.

[4] The "National Wildlife System" is further defined as including "lands and waters administered by the Secretary as wildlife refuges, * * * wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order." *Ibid.* And "reserve area" is later defined as meaning "any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the [United States Fish and Wildlife] Service." 16 U.S.C. (Supp. II) 715s(g)(3).

This, in effect, is the same coverage as the original 1935 Act, 49 Stat. 383, which applied to specified revenues from "refuges * * * administered by the Bureau of Biological Survey of the United States Department of Agriculture," the predecessor of the Fish and Wildlife Service. See our opening Brief at 25.

spite its name, the Kenai Range is not classified as a "game range," under "the joint jurisdiction of the Bureau of Land Management and the United States Wildlife Service." The reason is simply that it was not "reserved for [the] dual purposes" specified in the regulations. *Ibid.* See Exec. Order No. 8979, 6 Fed. Reg. 6471 (1941). See also *Udall* v. *Tallman*, 380 U.S. 1, 5-16 (1965).[5]

That ought to be the end of the matter. So far as distribution of non-mineral revenues is concerned, the Kenai Moose Range has at all times been within the scope of the Wildlife Revenue Sharing Act.[6] If, as we have argued, that Act, at least since 1964, reaches mineral receipts from public land refuges generally, there is no ground for exempting the Kenai Range, equally administered by the Fish and Wildlife Service. The Secretary's letters cited by the State (Resp. Br. 17-18) do not suggest otherwise: They speak of

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[5] In *Tallman*, this Court fully reviewed the history of the Kenai Moose Range, as well as the sequence of mineral leasing regulations applicable generally to wildlife refuges. The Court's opinion recites, *inter alia*, the agreement reached in 1956 between the Department of the Interior and the House Committee on Merchant Marine and Fisheries with respect to the submission of any mineral leasing proposal, or other "alienation or relinquishment of any interest," affecting lands "under [the] jurisdiction" of the Fish and Wildlife Service, and the Committee's approval, "[p]ursuant to [that] agreement," of a Wildlife Service proposal for some 30 oil and gas leases on the Kenai Range. 380 U.S. at 10-12. It is thus clear that, at least since 1956, the Kenai refuge was recognized by all concerned as under the administration of the Service.

[6] Thus, the very Department of the Interior charts invoked by Alaska (Resp. Br. 19-20) indicate that non-mineral receipts from the Kenai Range were distributed under the Wildlife Refuge Revenue Sharing Act.

"jointly administered" "game ranges," not "Alaska wildlife areas." The attempt to confuse the two categories, carefully distinguished in published regulations since 1958,[7] is disingenuous.

It is wholly irrelevant that, in some respects, the mineral leasing rules for "game ranges" and "Alaska wildlife areas" are the same. And it is equally beside the point that such leases are issued through the Bureau of Land Management. That is true *in every case* where wildlife refuge lands are leased. 43 C.F.R. 192.9(b) (1959); 50 C.F.R. 29.31 (1961); 43 C.F.R. 3101.3-3(a)(1); 50 C.F.R. 29.31. For purposes of the Wildlife Revenue Sharing Act, the refuge remains "solely or primarily administered" by the Fish and Wildlife Service. See 43 C.F.R. 192.9(a)(1) (1959); 43 C.F.R. 3101.3-3(a). If it were otherwise, no mineral revenues, even from acquired land refuges, would ever be distributed to countries. And that, even Alaska does not suggest. See Resp. Br. 19, 21.

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[7] In fact, the distinction is older. At least as early as 1956, the Secretary of the Interior had informed Congress that the Wildlife Refuge System included some 7,280,596 acres of public lands in Alaska (obviously including the Kenai Range) "withdrawn for sole administration by the Fish and Wildlife Service," as contrasted with some 4,615,774 acres elsewhere "withdrawn for joint administration by the Fish and Wildlife Service and some other agency * * *, most frequently * * * stock grazing under the Bureau of Land Management." Letter from the Acting Secretary of the Interior to the Chairman of the House Committee on Merchant Marine and Fisheries (Feb. 23, 1956), in *Wildlife Refuge Disposal Policy: Hearings on H.R. 5306, H.R. 6723 and H.R. 8839 Before the House Comm. on Merchant Marine and Fisheries*, 84th Cong., 2d Sess. 268-269 (1956).

For the reasons stated here and in our opening brief, the judgment below should be reversed.

Respectfully submitted.

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